

1 STATE OF OKLAHOMA

2 2nd Session of the 51st Legislature (2008)

3 HOUSE BILL 3168

By: Jackson

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6 AS INTRODUCED

7 An Act relating to consumer protection; amending 15
8 O.S. 2001, Section 775A.4, as amended by Section 1,
9 Chapter 317, O.S.L. 2002 (15 O.S. Supp. 2007, Section
10 775A.4), which relates to unlawful telemarketing
11 practices; making it an unlawful telemarketing
12 practice to make commercial telephone solicitations
13 on a Sunday; and providing an effective date.

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

15 SECTION 1. AMENDATORY 15 O.S. 2001, Section 775A.4, as
16 amended by Section 1, Chapter 317, O.S.L. 2002 (15 O.S. Supp. 2007,
17 Section 775A.4), is amended to read as follows:

18 Section 775A.4 A. A commercial telephone seller engages in an
19 unlawful telemarketing practice when, in the course of any
20 commercial telephone solicitation, the seller:

21 1. Conducts business as a commercial telephone seller without
22 having registered with the Attorney General, as required by Section
23 775A.3 of this title;

24 2. Fails to allow the purchaser in any telephone sales
transaction to cancel any purchase or agreement to purchase goods,

1 services or property at any time before the expiration of three (3)
2 business days after the purchaser's receipt of such goods, services
3 or property by delivering or mailing to the commercial telephone
4 seller written notice of cancellation. Notice of cancellation, if
5 sent by mail, is deemed to be given as of the date the mailed notice
6 was postmarked;

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

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

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

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

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

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

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

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

20 9. Uses equipment, systems or procedures which automatically
21 dial and engage the telephone number of more than one person at a
22 time resulting in a number of abandoned calls per day that are more
23 than five percent (5%) of the number of answered calls per day in
24 any campaign; 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. It shall be an unlawful telemarketing practice to make a
20 commercial telephone solicitation to a prospective purchaser located
21 in this state on a Sunday.

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

3 ~~D.~~ E. Any violations of this act are violations of the Oklahoma
4 Consumer Protection Act.

5 SECTION 2. This act shall become effective November 1, 2008.

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