

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 COMMITTEE SUBSTITUTE

4 FOR ENGROSSED

5 SENATE BILL NO. 413

By: Brown of the Senate

and

Wright (John) of the House

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9 COMMITTEE SUBSTITUTE

10 An Act relating to contracts; amending 15 O.S. 2001,
11 Sections 775A.2 and 775A.4, as amended by Section 1,
12 Chapter 317, O.S.L. 2002 (15 O.S. Supp. 2008, Section
13 775A.4), which relate to the Telemarketer Restriction
14 Act; modifying definitions; modifying provisions
15 related to unlawful telemarketing practices; and
16 providing an effective date.

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

18 SECTION 1. AMENDATORY 15 O.S. 2001, Section 775A.2, is
19 amended to read as follows:

20 Section 775A.2 As used in ~~this act~~ Section 775A.1 et seq. of
21 this title, unless the context otherwise requires:

22 1. "Commercial telephone seller" or "seller" means a person
23 who, in the course of such person's business, vocation or
24 occupation, on the person's own behalf or on behalf of another
person, causes or attempts to cause a commercial telephone

1 solicitation to be made; a commercial telephone seller shall include
2 all businesses that solicit an Oklahoma business to list such
3 Oklahoma business in a business directory; except that "commercial
4 telephone seller" or "seller" does not include the following:

5 a. a person offering or selling a security as defined in
6 Section 2 of Title 71 of the Oklahoma Statutes if:

7 (1) the security is either registered as required by
8 Section 301 of Title 71 of the Oklahoma Statutes,
9 or exempt from registration under Section 401 of
10 Title 71 of the Oklahoma Statutes and general or
11 public solicitation is not prohibited or the
12 security is a federal covered security for which
13 a notice filing has been made under Section 305.2
14 of Title 71 of the Oklahoma Statutes, and

15 (2) the person is registered as required by Section
16 201 of Title 71 of the Oklahoma Statutes as a
17 broker-dealer as defined in Section 2 of Title 71
18 of the Oklahoma Statutes, an agent as defined in
19 Section 2 of Title 71 of the Oklahoma Statutes,
20 an investment adviser as defined in Section 2 of
21 Title 71 of the Oklahoma Statutes, or an
22 investment adviser representative as defined in
23 Section 2 of Title 71 of the Oklahoma Statutes,
24 unless expressly excluded from such definitions,

1 or such person is exempted from registration
2 under Section 201 of Title 71 of the Oklahoma
3 Statutes,

- 4 b. a person soliciting the sale of any book, record,
5 audio tape, compact disc or video if the person allows
6 the purchaser to review the merchandise without
7 obligation for at least seven (7) days and provides a
8 full refund for the return of undamaged merchandise
9 within thirty (30) days or if the person solicits such
10 sale on behalf of a membership club operating in
11 conformity with 16 Code of Federal Regulations 425,
- 12 c. a person making telephone calls to a residential
13 customer for the sole purpose of polling or soliciting
14 the expression of ideas, opinions or votes, or a
15 person soliciting solely for a political or religious
16 cause or purpose,
- 17 d. a paid solicitor or charitable organization which is
18 required to and which has complied with the notice and
19 reporting requirements of Section 552.3 of Title 18 of
20 the Oklahoma Statutes or a person who is excluded from
21 such notice and reporting requirements by Section
22 552.4 of Title 18 of the Oklahoma Statutes,
- 23 e. a supervised financial organization, as defined in
24 Section 1-301 of Title 14A of the Oklahoma Statutes,

1 and its employees, when acting within the scope of
2 their employment,

3 f. a supervised lender, as defined in subsection (2) of
4 Section 3-501 of Title 14A of the Oklahoma Statutes,
5 and its agents and employees, when acting within the
6 scope of their employment,

7 g. a person or an affiliate of a person who is regulated
8 by the Insurance Commission pursuant to Title 36 of
9 the Oklahoma Statutes,

10 h. a person soliciting without the intent to complete and
11 who does not in fact complete the sales transaction
12 during the telephone solicitation or another telephone
13 solicitation and who only completes the sales
14 transaction at a later face-to-face meeting between
15 the solicitor and the prospective purchaser, excluding
16 a face-to-face meeting, the sole purpose of which is
17 to collect the payment or deliver any item purchased,
18 or a person soliciting a purchaser with whom the
19 person has had a previous face-to-face meeting in the
20 course of such person's business,

21 i. any governmental entity or employee thereof, acting in
22 the employee's official capacity,

23 j. a person soliciting telephone service, or licensed or
24 franchised cable television service, which is billed

1 and paid on a daily, weekly, or monthly basis and
2 which can be canceled at any time without further
3 obligation to the purchaser,

4 k. a person or an affiliate of a person whose business is
5 regulated by the Oklahoma Real Estate Commission,

6 l. a person whose conduct is within the exclusive
7 jurisdiction of the federal Commodity Futures Trading
8 Commission as granted under the federal "Commodity
9 Exchange Act", as amended,

10 m. a seller of food for immediate consumption when the
11 sale to one purchaser does not exceed Three Hundred
12 Dollars (\$300.00),

13 n. a person who initially contacts the purchaser with a
14 retail sales catalog requesting a telephone call
15 response, when the person allows the purchaser to
16 review the merchandise without obligation for at least
17 seven (7) days and provides a full refund for the
18 return of undamaged merchandise within thirty (30)
19 days after receipt of the returned merchandise,

20 o. an issuer or a subsidiary of an issuer that has a
21 class of securities which is subject to Section 12 of
22 the federal "Securities Exchange Act of 1934", 15
23 U.S.C. 781, and which is either registered or exempt
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- 1 from registration under paragraph (A), (B), (C), (E),
2 (F), (G) or (H) of subsection (g) (2) of that section,
3 p. a person who has been operating for at least three (3)
4 years a retail business establishment in Oklahoma
5 under the same name as that used in connection with
6 the solicitation of sales by telephone if, on a
7 continuing basis, the majority of the seller's
8 business involves the purchaser receiving the seller's
9 goods and services at the seller's business location,
10 q. any telephone marketing service company which provides
11 telemarketing sales services under written contract to
12 sellers and has been operating continuously for at
13 least five (5) years under the same business name and
14 seventy-five percent (75%) or more of its services are
15 performed on behalf of sellers exempt from this
16 section. Nothing in this paragraph shall be construed
17 to exempt any commercial telephone seller that
18 contracts with a telephone marketing service company
19 for telemarketing sales service from the requirements
20 set forth in Section 775A.3 of this title,
21 r. a person soliciting business solely from business
22 purchasers who have previously purchased identical or
23 similar goods or services from the business enterprise
24 on whose behalf the person is calling; however, this

1 exception shall not apply to a business that solicits
2 an Oklahoma business to list such Oklahoma business in
3 a business directory,

4 s. a person or an affiliate of a person whose business is
5 regulated by the Corporation Commission, or

6 t. a person soliciting the sale of any newspaper,
7 magazine, or other periodical of general circulation
8 if such sales constitute a majority of such person's
9 business and business revenues;

10 2. "Commercial telephone solicitation" means:

11 a. unsolicited telephone calls to a person initiated by a
12 commercial telephone seller or salesperson, or an
13 automated dialing machine with or without a recorded
14 message device, for the purpose of inducing the person
15 to purchase or invest in goods, services or property
16 or offering an extension of credit,

17 b. any other communication by a commercial telephone
18 seller in which:

19 (1) a gift, award, prize or contest is offered and a
20 telephone call response from the intended
21 purchaser is invited,

22 (2) a loan, credit card or other extension of credit
23 is offered to a purchaser who has not previously
24 purchased from the person initiating the

1 communication, and a telephone call response from
2 the intended purchaser is invited, or

3 (3) a sale is to be completed or an agreement to
4 purchase is to be entered into during the course
5 of the telephone call response, or

6 c. any other communication by a commercial telephone
7 seller which includes representations about the price,
8 quality or availability of goods, services or property
9 and which invites a response by telephone, including
10 pay-per-call service calls, or which is followed by a
11 telephone call to the intended purchaser by a
12 salesperson;

13 3. "Pay-per-call" means the use of a telephone number with a
14 900 prefix or any other prefix under which liability for the service
15 or product provided attaches to the telephone bill of the individual
16 calling such number;

17 4. "Principal" means an owner, an officer of a corporation, a
18 general partner of a partnership, the sole proprietor of a sole
19 proprietorship, a trustee of a trust or any other individual with
20 similar supervisory functions with respect to any person;

21 5. "Purchaser" means a person who receives or responds to a
22 commercial telephone solicitation;

1 6. "Salesperson" means any person employed or authorized by a
2 commercial telephone seller to cause or attempt to cause a
3 commercial telephone solicitation to be made; and

4 7. "Telephone sales transaction" means any payment of money by
5 a purchaser in exchange for the promise of goods, services, property
6 or an extension of credit by a commercial telephone seller and
7 includes all communications which precede such payment of money.

8 SECTION 2. AMENDATORY 15 O.S. 2001, Section 775A.4, as
9 amended by Section 1, Chapter 317, O.S.L. 2002 (15 O.S. Supp. 2008,
10 Section 775A.4), is amended to read as follows:

11 Section 775A.4 A. A commercial telephone seller engages in an
12 unlawful telemarketing practice when, in the course of any
13 commercial telephone solicitation, the seller:

14 1. Conducts business as a commercial telephone seller without
15 having registered with the Attorney General, as required by Section
16 775A.3 of this title;

17 2. Fails to allow the purchaser in any telephone sales
18 transaction to cancel any purchase or agreement to purchase goods,
19 services or property at any time before the expiration of three (3)
20 business days after the purchaser's receipt of such goods, services
21 or property by delivering or mailing to the commercial telephone
22 seller written notice of cancellation. Notice of cancellation, if
23 sent by mail, is deemed to be given as of the date the mailed notice
24 was postmarked;

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

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

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

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

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

23 6. Represents that the seller's goods, services or property are
24 "free" if the commercial telephone seller charges or collects a fee

1 from the purchaser in exchange for providing or delivering such
2 goods, services or property;

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

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

12 9. Uses equipment, systems or procedures which automatically
13 dial and engage the telephone number of more than one person at a
14 time resulting in a number of abandoned calls per day that are more
15 than five percent (5%) of the number of answered calls per day in
16 any campaign; ~~or~~

17 10. Sends a bill or a dunning communication to an Oklahoma
18 business for listing that business in a business directory or
19 renewing such a listing unless the seller has written authorization
20 from the principal of the business for the listing or the renewal;
21 or

22 11. Engages in any deceptive trade practice defined in Section
23 752 of this title.

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

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

21 D. Any violations of ~~this act~~ Section 775A.1 et seq. of this
22 title are violations of the Oklahoma Consumer Protection Act.

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SECTION 3. This act shall become effective November 1, 2009.

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