

1 STATE OF OKLAHOMA

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

3 CONFERENCE COMMITTEE SUBSTITUTE

4 FOR ENGROSSED

5 SENATE BILL 413

By: Brown of the Senate

and

Wright (John) of the House

6
7
8
9 CONFERENCE COMMITTEE SUBSTITUTE

10 An Act relating to contracts; amending 15 O.S. 2001,
11 Sections 245A 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 manufactures, wholesalers
14 and distributors and to the Telemarketer Restriction
15 Act; adding a prohibited act for certain suppliers;
16 making certain requirements not a violation;
17 prohibiting certain actions by a commercial telephone
18 seller; and providing an effective date.

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

20 SECTION 1. AMENDATORY 15 O.S. 2001, Section 245A, is
21 amended to read as follows:

22 Section 245A. A. It shall be a violation of Section 245 et
23 seq. of this title for a supplier:

24 1. Except as required by any applicable law or unless such
special features or accessories are safety features or accessories
required by a supplier, to coerce or compel any equipment dealer to

1 order or accept delivery of any equipment or parts or any equipment
2 with special features or accessories not included in the base list
3 price of such equipment as publicly advertised by the supplier which
4 the equipment dealer has not voluntarily ordered;

5 2. To coerce or compel any equipment dealer to enter into any
6 agreement, warranty agreement or otherwise, whether written or oral,
7 supplementary to an existing dealer agreement with the supplier
8 unless the supplementary or amendatory agreement is imposed on all
9 other similarly situated dealers in this state;

10 3. To discriminate in the delivery of any equipment to any
11 dealer in reasonable quantities and within a reasonable time after
12 receipt of the equipment dealer's order, if such equipment covered
13 by such dealer agreement was specifically represented by such
14 supplier to be available for immediate delivery; however, the
15 failure to deliver any such equipment shall not be considered a
16 violation of Section 245 et seq. of this title if such failure is
17 due to restrictions on extension of credit by the supplier to the
18 equipment dealer, any breach of or default under the agreement by
19 the equipment dealer, an act of God, work stoppage or delay due to a
20 strike or labor difficulty, a bona fide shortage of materials,
21 freight embargo, or other cause over which the supplier has no
22 control;

23 4. To coerce or compel an equipment dealer to accept late
24 delivery of backordered items of equipment, when said backordered

1 equipment is of special value in a particular time of year because
2 of predictable seasonal demand, and when equipment is substantially
3 less marketable and less valuable after the seasonal demand period
4 has ended; provided, if such backordered equipment is received by
5 the retailer after the seasonal demand period has ended, and if the
6 retailer requests the same in writing within ten (10) days of
7 receipt of such backordered equipment, then the supplier shall take
8 back any unwanted backordered equipment at no cost to the retailer,
9 unless the supplier has given notice to the dealer of the status of
10 the backordered equipment prior to the actual shipment to the
11 dealer;

12 5. To terminate, cancel, or fail to renew a dealer agreement or
13 substantially change the competitive circumstances of the dealer
14 agreement without cause;

15 6. To require as a condition of renewal or extension of a
16 dealership agreement that the dealer complete substantial renovation
17 of the dealer's place of business, or acquire new or additional
18 space to serve as the dealer's place of business, unless the
19 supplier provides at least one (1) year's written notice of the
20 condition which states all grounds supporting the condition; the
21 supplier, further, must provide a reasonable time for the dealer to
22 complete the renovation or acquisition;

23 7. To sell or offer to sell any new equipment to any retail
24 outlet in which the supplier has any ownership interest at a lower

1 actual price therefor than the actual price sold or offered to any
2 other equipment dealer for the same equipment identically equipped
3 or to utilize any device, including but not limited to sale
4 promotion plans or programs, which results in such lesser actual
5 price, or results in a fixed price predetermined solely by the
6 supplier; provided, however, the provisions of this paragraph shall
7 not apply to sales to an equipment dealer for resale to any unit or
8 agency of the United States government, this state, or any of its
9 political subdivisions, or any municipality located within this
10 state or to any major fleet account, or to any organization for
11 testing or demonstration;

12 8. To prevent by contract or otherwise, any equipment dealer or
13 any officer, member, partner, or stockholder of any equipment dealer
14 from selling or transferring any part of the interest of any of them
15 to any other party or parties; however, no equipment dealer,
16 officer, partner, member, or stockholder shall have the right to
17 sell, transfer, or assign the equipment dealership or power of
18 management or control thereunder without the written consent of the
19 supplier, except that such consent shall not be unreasonably
20 withheld;

21 9. To unreasonably withhold consent, in the event of the death
22 of the equipment dealer or the principal owner of the equipment
23 dealership, to the transfer of the equipment dealer's interest in
24 the equipment dealership to a member or members of the family of the

1 equipment dealer or the principal owner of the equipment dealership
2 if the family member meets the reasonable financial, business
3 experience and character standards of the supplier; provided, if a
4 supplier determines that the designated family member is not
5 acceptable, the supplier shall provide the equipment dealer with
6 written notice of the supplier's objection and specific reasons for
7 withholding its consent; provided, a supplier shall have ninety (90)
8 days to consider an equipment dealer's request to make a transfer to
9 a family member; further provided, as used in this paragraph,
10 "family" means and includes a spouse, parents, siblings, children,
11 stepchildren, sons-in-law, daughters-in-law, and lineal descendants,
12 including those by adoption of the equipment dealer or principal
13 owner of the equipment dealership; and further provided, that
14 notwithstanding the foregoing, in the event that a supplier and
15 equipment dealer have duly executed an agreement concerning
16 succession rights prior to the equipment dealer's death, and if such
17 agreement has not been revoked or otherwise terminated by either
18 party, such agreement shall be observed; ~~or~~

19 10. To require an equipment dealer to assent to a release,
20 assignment, novation, waiver, or estoppel which would relieve any
21 person from liability imposed by Section 245 et seq. of this title;
22 or

23 11. To coerce any dealer into a refusal to purchase equipment
24 manufactured by another supplier. However, it shall not be a

1 violation of this section to require separate facilities, financial
2 statements or sales staff for major competing lines so long as the
3 dealer is given at least three (3) years' notice of such
4 requirement.

5 B. Notwithstanding the provisions of paragraphs 8 and 9 of
6 subsection A of this section, the supplier may determine that a
7 dealer's area of responsibility or trade area does not afford
8 sufficient sales potential to continue to reasonably support a
9 dealer.

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

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

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

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

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

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

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

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

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

19 10. Engages in any deceptive trade practice defined in Section
20 752 of this title.

21 B. Paragraphs 2 and 4 of subsection A of this section do not
22 apply to a transaction in which the consumer obtains a full refund
23 for the return of undamaged or unused goods or a cancellation of
24 services by giving notice to the seller within seven (7) days after

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

13 C. A commercial telephone seller is additionally prohibited
14 from rendering a bill, invoice or dunning communication to a
15 customer as a result of any commercial telephone solicitation or
16 telephone sales transaction unless the customer and the seller enter
17 into a legally valid and binding contract.

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

22 ~~D.~~ E. Any violations of this act Sections 775A.1 through 775A.4
23 of this title are violations of the Oklahoma Consumer Protection
24 Act.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

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

52-1-1950 LKS 5/12/2009 5:06:25 PM