

THE HOUSE OF REPRESENTATIVES
Monday, March 30, 2009

Committee Substitute for
ENGROSSED
Senate Bill No. 413

COMMITTEE SUBSTITUTE FOR ENGROSSED SENATE BILL NO. 413 - By: BROWN
of the Senate and WRIGHT (JOHN) of the House.

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

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

- 1 SECTION 1. AMENDATORY 15 O.S. 2001, Section 775A.2, is amended to read
2 as follows:
- 3 Section 775A.2 As used in ~~this act~~ Section 775A.1 et seq. of this title, unless the
4 context otherwise requires:
- 5 1. “Commercial telephone seller” or “seller” means a person who, in the course of
6 such person's business, vocation or occupation, on the person's own behalf or on behalf of
7 another person, causes or attempts to cause a commercial telephone solicitation to be
8 made; a commercial telephone seller shall include all businesses that solicit an
9 Oklahoma business to list such Oklahoma business in a business directory; except that
10 “commercial telephone seller” or “seller” does not include the following:

- 1 a. a person offering or selling a security as defined in Section 2 of Title 71
2 of the Oklahoma Statutes if:
- 3 (1) the security is either registered as required by Section 301 of
4 Title 71 of the Oklahoma Statutes, or exempt from registration
5 under Section 401 of Title 71 of the Oklahoma Statutes and
6 general or public solicitation is not prohibited or the security is a
7 federal covered security for which a notice filing has been made
8 under Section 305.2 of Title 71 of the Oklahoma Statutes, and
- 9 (2) the person is registered as required by Section 201 of Title 71 of
10 the Oklahoma Statutes as a broker-dealer as defined in Section
11 2 of Title 71 of the Oklahoma Statutes, an agent as defined in
12 Section 2 of Title 71 of the Oklahoma Statutes, an investment
13 adviser as defined in Section 2 of Title 71 of the Oklahoma
14 Statutes, or an investment adviser representative as defined in
15 Section 2 of Title 71 of the Oklahoma Statutes, unless expressly
16 excluded from such definitions, or such person is exempted from
17 registration under Section 201 of Title 71 of the Oklahoma
18 Statutes,
- 19 b. a person soliciting the sale of any book, record, audio tape, compact
20 disc or video if the person allows the purchaser to review the
21 merchandise without obligation for at least seven (7) days and provides
22 a full refund for the return of undamaged merchandise within thirty

- 1 (30) days or if the person solicits such sale on behalf of a membership
2 club operating in conformity with 16 Code of Federal Regulations 425,
3 c. a person making telephone calls to a residential customer for the sole
4 purpose of polling or soliciting the expression of ideas, opinions or
5 votes, or a person soliciting solely for a political or religious cause or
6 purpose,
7 d. a paid solicitor or charitable organization which is required to and
8 which has complied with the notice and reporting requirements of
9 Section 552.3 of Title 18 of the Oklahoma Statutes or a person who is
10 excluded from such notice and reporting requirements by Section 552.4
11 of Title 18 of the Oklahoma Statutes,
12 e. a supervised financial organization, as defined in Section 1-301 of Title
13 14A of the Oklahoma Statutes, and its employees, when acting within
14 the scope of their employment,
15 f. a supervised lender, as defined in subsection (2) of Section 3-501 of
16 Title 14A of the Oklahoma Statutes, and its agents and employees,
17 when acting within the scope of their employment,
18 g. a person or an affiliate of a person who is regulated by the Insurance
19 Commission pursuant to Title 36 of the Oklahoma Statutes,
20 h. a person soliciting without the intent to complete and who does not in
21 fact complete the sales transaction during the telephone solicitation or
22 another telephone solicitation and who only completes the sales

1 transaction at a later face-to-face meeting between the solicitor and the
2 prospective purchaser, excluding a face-to-face meeting, the sole
3 purpose of which is to collect the payment or deliver any item
4 purchased, or a person soliciting a purchaser with whom the person
5 has had a previous face-to-face meeting in the course of such person's
6 business,

- 7 i. any governmental entity or employee thereof, acting in the employee's
- 8 official capacity,
- 9 j. a person soliciting telephone service, or licensed or franchised cable
- 10 television service, which is billed and paid on a daily, weekly, or
- 11 monthly basis and which can be canceled at any time without further
- 12 obligation to the purchaser,
- 13 k. a person or an affiliate of a person whose business is regulated by the
- 14 Oklahoma Real Estate Commission,
- 15 l. a person whose conduct is within the exclusive jurisdiction of the
- 16 federal Commodity Futures Trading Commission as granted under the
- 17 federal "Commodity Exchange Act", as amended,
- 18 m. a seller of food for immediate consumption when the sale to one
- 19 purchaser does not exceed Three Hundred Dollars (\$300.00),
- 20 n. a person who initially contacts the purchaser with a retail sales catalog
- 21 requesting a telephone call response, when the person allows the
- 22 purchaser to review the merchandise without obligation for at least

1 seven (7) days and provides a full refund for the return of undamaged
2 merchandise within thirty (30) days after receipt of the returned
3 merchandise,
4 o. an issuer or a subsidiary of an issuer that has a class of securities
5 which is subject to Section 12 of the federal “Securities Exchange Act of
6 1934”, 15 U.S.C. 781, and which is either registered or exempt from
7 registration under paragraph (A), (B), (C), (E), (F), (G) or (H) of
8 subsection (g) (2) of that section,
9 p. a person who has been operating for at least three (3) years a retail
10 business establishment in Oklahoma under the same name as that
11 used in connection with the solicitation of sales by telephone if, on a
12 continuing basis, the majority of the seller's business involves the
13 purchaser receiving the seller's goods and services at the seller's
14 business location,
15 q. any telephone marketing service company which provides
16 telemarketing sales services under written contract to sellers and has
17 been operating continuously for at least five (5) years under the same
18 business name and seventy-five percent (75%) or more of its services
19 are performed on behalf of sellers exempt from this section. Nothing in
20 this paragraph shall be construed to exempt any commercial telephone
21 seller that contracts with a telephone marketing service company for

- 1 telemarketing sales service from the requirements set forth in Section
2 775A.3 of this title,
- 3 r. a person soliciting business solely from business purchasers who have
4 previously purchased identical or similar goods or services from the
5 business enterprise on whose behalf the person is calling; however, this
6 exception shall not apply to a business that solicits an Oklahoma
7 business to list such Oklahoma business in a business directory,
- 8 s. a person or an affiliate of a person whose business is regulated by the
9 Corporation Commission, or
- 10 t. a person soliciting the sale of any newspaper, magazine, or other
11 periodical of general circulation if such sales constitute a majority of
12 such person's business and business revenues;

13 2. "Commercial telephone solicitation" means:

- 14 a. unsolicited telephone calls to a person initiated by a commercial
15 telephone seller or salesperson, or an automated dialing machine with
16 or without a recorded message device, for the purpose of inducing the
17 person to purchase or invest in goods, services or property or offering
18 an extension of credit,
- 19 b. any other communication by a commercial telephone seller in which:
20 (1) a gift, award, prize or contest is offered and a telephone call
21 response from the intended purchaser is invited,

- 1 (2) a loan, credit card or other extension of credit is offered to a
2 purchaser who has not previously purchased from the person
3 initiating the communication, and a telephone call response
4 from the intended purchaser is invited, or
5 (3) a sale is to be completed or an agreement to purchase is to be
6 entered into during the course of the telephone call response, or
7 c. any other communication by a commercial telephone seller which
8 includes representations about the price, quality or availability of
9 goods, services or property and which invites a response by telephone,
10 including pay-per-call service calls, or which is followed by a telephone
11 call to the intended purchaser by a salesperson;

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

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

18 5. “Purchaser” means a person who receives or responds to a commercial telephone
19 solicitation;

20 6. “Salesperson” means any person employed or authorized by a commercial
21 telephone seller to cause or attempt to cause a commercial telephone solicitation to be
22 made; and

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

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

8 Section 775A.4 A. A commercial telephone seller engages in an unlawful
9 telemarketing practice when, in the course of any commercial telephone solicitation, the
10 seller:

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

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

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

- 1 a. if the purchaser has received goods or property from the commercial
2 telephone seller, other than an item represented as free, the
3 commercial telephone seller shall refund all payments made by the
4 purchaser within thirty (30) days after the commercial telephone
5 seller's receipt of the returned goods or property, and
6 b. if the purchaser has received services during the course of a pay-per-
7 call service call, which services cannot, by their nature, be returned,
8 the commercial telephone seller is not required to refund payments to
9 the purchaser;
- 10 4. Fails to disclose to the purchaser during a telephone solicitation that the
11 purchaser has the cancellation rights set forth in paragraph 2 of this subsection;
- 12 5. Misrepresents to any person that the person has won a contest, sweepstakes or
13 drawing, or that the person will receive free goods, services or property;
- 14 6. Represents that the seller's goods, services or property are “free” if the
15 commercial telephone seller charges or collects a fee from the purchaser in exchange for
16 providing or delivering such goods, services or property;
- 17 7. Makes any reference to the commercial telephone seller's compliance with this
18 act to any purchaser without also disclosing that compliance with this act does not
19 constitute approval by any governmental agency of the seller's marketing,
20 advertisements, promotions, goods or services;

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

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

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

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

12 B. Paragraphs 2 and 4 of subsection A of this section do not apply to a transaction
13 in which the consumer obtains a full refund for the return of undamaged or unused goods
14 or a cancellation of services by giving notice to the seller within seven (7) days after
15 receipt by the consumer and the seller processes the refund or cancellation within thirty
16 (30) days after receipt of the returned merchandise or the consumer's request for refund
17 for services not performed or a pro rata refund for any services not yet performed for the
18 consumer. The availability and terms of the return and refund privilege shall be
19 disclosed to the consumer orally by telephone and in writing with any advertising or
20 promotional material or with the delivery of the product or service. If a seller offers
21 consumers an unconditional guarantee, a clear disclosure of such guarantee by using the

1 words “satisfaction guaranteed”, “free inspection” or “no-risk guarantee” satisfy the
2 disclosure requirements of this subsection.

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

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

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

9 COMMITTEE REPORT BY: COMMITTEE ON ECONOMIC DEVELOPMENT AND
10 FINANCIAL SERVICES, dated 03-26-09 - DO PASS, As Amended.