

1 ENGROSSED HOUSE AMENDMENT
TO
2 ENGROSSED SENATE BILL NO. 398

By: Stanislawski of the
Senate

3
4 and

5 Martin (Steve) of the
House

6
7
8 An Act relating to telephone solicitation; amending
9 15 O.S. 2001, Section 755.2, which relates to
10 unsolicited calls by automatic dialing device;
11 expanding voidable contract options for using certain
12 text message device; * * * providing an effective
13 date; and declaring an emergency.

14 AUTHORS: Add the following House Coauthors: Bennett and Tibbs

15 AMENDMENT NO. 1. Strike the title, enacting clause and entire bill
and insert

16 "An Act relating to telephone solicitation; amending
17 15 O.S. 2001, Section 755.2, which relates to
18 unsolicited calls by automatic dialing device;
19 expanding voidable contract options for using
20 certain text message device; amending 15 O.S. 2001,
21 Section 775A.1, which relates to Legislative
22 findings; clarifying certain findings; amending 15
23 O.S. 2001, Section 775A.2, which relates to
24 definitions; modifying certain definitions; amending
Section 2, Chapter 72, O.S.L. 2002, as amended by
Section 1, Chapter 357, O.S.L. 2003 (15 O.S. Supp.
2010, Section 775B.2), which relates to definitions
in the Telemarketer Restriction Act; expanding
certain definitions to include cellular telephone
text messages; amending Section 3, Chapter 72,
O.S.L. 2002 (15 O.S. Supp. 2010, Section 775B.3),
which relates to telemarketing registry; expanding

1 scope of registry to prohibit unsolicited text
2 messaging; amending Section 4, Chapter 72, O.S.L.
3 2002, as amended by Section 2, Chapter 357, O.S.L.
4 2003 (15 O.S. Supp. 2010, Section 775B.4), which
5 relates to no-telemarketer-sales-call registry;
6 expanding scope of registry; amending Section 6,
7 Chapter 72, O.S.L. 2002, as amended by Section 3,
8 Chapter 357, O.S.L. 2003 (15 O.S. Supp. 2010,
9 Section 775B.6), which relates to violations;
10 including unsolicited text messaging in certain
11 violation; expanding certain exception to violation;
12 amending 15 O.S. 2001, Sections 752 and 753, as last
13 amended by Sections 1 and 2, Chapter 61, O.S.L. 2003
14 (15 O.S. Supp. 2010, Sections 752 and 753), which
15 relate to the Oklahoma Consumer Protection Act;
16 defining term; adding unlawful practices; providing
17 an effective date; and declaring an emergency.

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

19 SECTION 1. AMENDATORY 15 O.S. 2001, Section 755.2, is
20 amended to read as follows:

21 Section 755.2 A contract or agreement to purchase any consumer
22 goods or services pursuant to an unsolicited telephone call or
23 message, including a cellular telephone call or text message, made
24 by an automatic dial announcing device conveying a prerecorded or
synthesized voice message or an automatic dialing device with
electronic text message delivery capabilities and without the use of
a live operator in violation of the Oklahoma Consumer Protection Act
shall be voidable at the option of the consumer, unless it has been
memorialized in writing and signed by the consumer.

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

3 Section 775A.1 The Legislature hereby finds, determines and
4 declares that the use of telephones for commercial solicitation,
5 including, but not limited to, cellular telephone text messages, is
6 rapidly increasing; that this form of communication offers unique
7 benefits, but entails special risks and poses the potential for
8 abuse; that the Legislature finds that the widespread practice of
9 fraudulent and deceptive commercial telephone solicitation has
10 caused substantial financial losses to thousands of consumers and,
11 particularly, elderly, homebound and otherwise vulnerable consumers,
12 and is a matter vitally affecting the public interest; and,
13 therefore, that the general welfare of the public and the protection
14 of the integrity of the telemarketing industry requires statutory
15 regulation of the commercial use of telephones.

16 SECTION 3. AMENDATORY 15 O.S. 2001, Section 775A.2, is
17 amended to read as follows:

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

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

1 solicitation to be made; except that "commercial telephone seller"
2 or "seller" does not include ~~the following~~ a telephone call made by:

3 a. a person offering or selling a security as defined in
4 Section ~~2~~ 1-102 of Title 71 of the Oklahoma Statutes
5 if:

6 (1) the security is either registered as required by
7 Section ~~301~~ 1-301 of Title 71 of the Oklahoma
8 Statutes, or exempt from registration under
9 Section ~~401~~ 1-201 of Title 71 of the Oklahoma
10 Statutes and general or public solicitation is
11 not prohibited or the security is a federal
12 covered security for which a notice filing has
13 been made under Section ~~305.2~~ 1-302 of Title 71
14 of the Oklahoma Statutes, and

15 (2) the person is registered as required by Section
16 ~~201~~ 1-401, 1-402, 1-403 or 1-404 of Title 71 of
17 the Oklahoma Statutes as a broker-dealer as
18 defined in Section ~~2~~ 1-102 of Title 71 of the
19 Oklahoma Statutes, an agent as defined in Section
20 ~~2~~ 1-102 of Title 71 of the Oklahoma Statutes, an
21 investment adviser as defined in Section ~~2~~ 1-102
22 of Title 71 of the Oklahoma Statutes, or an
23 investment adviser representative as defined in
24 Section ~~2~~ 1-102 of Title 71 of the Oklahoma

1 Statutes, unless expressly excluded from such
2 definitions, or such person is exempted from
3 registration under Section ~~201~~ 1-401, 1-402, 1-
4 403 or 1-404 of Title 71 of the Oklahoma
5 Statutes,

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

- 1 e. a supervised financial organization, as defined in
2 Section 1-301 of Title 14A of the Oklahoma Statutes,
3 and its employees, when acting within the scope of
4 their employment,
- 5 f. a supervised lender, as defined in subsection (2) of
6 Section 3-501 of Title 14A of the Oklahoma Statutes,
7 and its agents and employees, when acting within the
8 scope of their employment,
- 9 g. a person or an affiliate of a person who is regulated
10 by the Insurance Commission pursuant to Title 36 of
11 the Oklahoma Statutes,
- 12 h. a person soliciting without the intent to complete and
13 who does not in fact complete the sales transaction
14 during the telephone solicitation or another telephone
15 solicitation and who only completes the sales
16 transaction at a later face-to-face meeting between
17 the solicitor and the prospective purchaser, excluding
18 a face-to-face meeting, the sole purpose of which is
19 to collect the payment or deliver any item purchased,
20 or a person soliciting a purchaser with whom the
21 person has had a previous face-to-face meeting in the
22 course of such person's business,
- 23 i. any governmental entity or employee thereof, acting in
24 the employee's official capacity,

- 1 j. a person soliciting telephone service, or licensed or
2 franchised cable television service, which is billed
3 and paid on a daily, weekly, or monthly basis and
4 which can be canceled at any time without further
5 obligation to the purchaser,
- 6 k. a person or an affiliate of a person whose business is
7 regulated by the Oklahoma Real Estate Commission,
- 8 l. a person whose conduct is within the exclusive
9 jurisdiction of the federal Commodity Futures Trading
10 Commission as granted under the federal "Commodity
11 Exchange Act", as amended,
- 12 m. a seller of food for immediate consumption when the
13 sale to one purchaser does not exceed Three Hundred
14 Dollars (\$300.00),
- 15 n. a person who initially contacts the purchaser with a
16 retail sales catalog requesting a telephone call
17 response, when the person allows the purchaser to
18 review the merchandise without obligation for at least
19 seven (7) days and provides a full refund for the
20 return of undamaged merchandise within thirty (30)
21 days after receipt of the returned merchandise,
- 22 o. an issuer or a subsidiary of an issuer that has a
23 class of securities which is subject to Section 12 of
24 the federal "Securities Exchange Act of 1934", 15

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

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

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

9 2. "Commercial telephone solicitation" means:

10 a. an unsolicited telephone ~~calls~~ call or message,
11 including, but not limited to, a cellular telephone
12 text message, to a person initiated by a commercial
13 telephone seller or salesperson, or an automated
14 dialing machine with or without a recorded message
15 device or electronic text message delivery device, for
16 the purpose of inducing the person to purchase or
17 invest in goods, services or property or offering an
18 extension of credit,

19 b. any other communication by a commercial telephone
20 seller in which:

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

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1 (2) a loan, credit card or other extension of credit
2 is offered to a purchaser who has not previously
3 purchased from the person initiating the
4 communication, and a telephone call response from
5 the intended purchaser is invited, or

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

9 c. any other communication by a commercial telephone
10 seller which includes representations about the price,
11 quality or availability of goods, services or property
12 and which invites a response by telephone or cellular
13 telephone text message, including pay-per-call or pay-
14 per-text service calls, or which is followed by a
15 telephone call or message, including, but not limited
16 to, a cellular telephone text message, to the intended
17 purchaser by a salesperson;

18 3. "Pay-per-call" or "pay-per-text" means the use of a
19 telephone number with a 900 prefix or any other prefix under which
20 liability for the service or product provided attaches to the
21 telephone bill of the individual calling such number;

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

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

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

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

12 SECTION 4. AMENDATORY Section 2, Chapter 72, O.S.L.
13 2002, as amended by Section 1, Chapter 357, O.S.L. 2003 (15 O.S.
14 Supp. 2010, Section 775B.2), is amended to read as follows:

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

16 1. "Commercial purposes" means relating to the sale or offer
17 for sale of goods or services. "Commercial purposes" does not mean
18 solicitation of funds or other support for a charitable or religious
19 activity; political candidate, cause, or organization; or any
20 activity of a not-for-profit entity organized pursuant to Section
21 501(c)(3) of the Internal Revenue Code;

22 2. "Consumer" means any natural person who is a resident of
23 this state and shall not include any business association,
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1 partnership, firm, corporation, and its affiliates or subsidiaries,
2 or other business entity;

3 3. "Established business relationship" means a prior
4 relationship formed within the preceding twenty-four (24) months or
5 an existing relationship formed by a voluntary two-way communication
6 between a person or entity and a residential subscriber with or
7 without an exchange of consideration, on the basis of an inquiry,
8 application, purchase or transaction by the residential subscriber
9 regarding products or services offered by such person or entity,
10 which relationship has not been previously terminated by either
11 party;

12 4. "Person" means any natural person, association, partnership,
13 firm, corporation and its affiliates or subsidiaries, or other
14 business entity;

15 5. "Telemarketer" means any person who, for commercial
16 purposes, initiates a telemarketing sales call or message,
17 including, but not limited to, a cellular telephone text message,
18 to a consumer located in this state or any person who directly
19 controls or supervises the conduct of a telemarketer; and

20 6. "Telemarketing" means any plan, program, or campaign which
21 is conducted for commercial purposes, by use of one or more
22 telephones or electronic messaging devices and which involves a
23 telephone call or message, including, but not limited to, a cellular
24 telephone text message, initiated by a telemarketer to a consumer

1 located within this state at the time of the call or message;
2 "telemarketing" may include use of random dialing or other devices
3 for such purposes and use of recorded or simulated voices or
4 automated electronic text messages delivery devices. "Telemarketing"
5 does not include a telephone call which is made for the sole purpose
6 of arranging a subsequent face-to-face meeting between a salesperson
7 and the consumer.

8 SECTION 5. AMENDATORY Section 3, Chapter 72, O.S.L. 2002
9 (15 O.S. Supp. 2010, Section 775B.3), is amended to read as follows:

10 Section 775B.3 ~~Not later than January 1, 2003, the~~ The Attorney
11 General shall establish, and thereafter maintain, a statewide
12 registry which shall contain a list of consumers who desire not to
13 receive unsolicited telemarketing sales calls or messages,
14 including, but not limited to, a cellular telephone text message.

15 The Attorney General may, pursuant to The Oklahoma Central
16 Purchasing Act, contract with a private vendor to establish and
17 maintain the registry.

18 SECTION 6. AMENDATORY Section 4, Chapter 72, O.S.L.
19 2002, as amended by Section 2, Chapter 357, O.S.L. 2003 (15 O.S.
20 Supp. 2010, Section 775B.4), is amended to read as follows:

21 Section 775B.4 The Attorney General shall publicize notice to
22 consumers of the establishment of the no-telemarketing-sales-call
23 registry and may provide, upon request, explanatory information
24 concerning the provisions of the Telemarketer Restriction Act. Any

1 consumer who desires to be included in the listing shall notify the
2 Attorney General by calling a toll-free number provided by the
3 Attorney General, or in any other manner, and at such times, as the
4 Attorney General may prescribe, which may include notification via
5 the Internet. The number or numbers of a consumer listed in the
6 registry shall be removed from the registry either by the consumer
7 calling a toll-free number provided by the Attorney General or upon
8 written request by the consumer. The Attorney General shall
9 implement a procedure to verify a consumer request to be added or
10 removed from the registry. The Attorney General shall update the
11 registry not less than quarterly and shall make the registry
12 available to telemarketers by such means and for such fees as are
13 determined by the Attorney General pursuant to the Administrative
14 Procedures Act. The Attorney General is authorized to forward all
15 consumer requests to be included in the registry to the Federal
16 Trade Commission, Federal Communications Commission, or any other
17 agency of the federal government charged with the establishment and
18 maintenance of a nationwide registry of consumers who desire not to
19 receive unsolicited telemarketing sales calls or messages,
20 including, but not limited to, a cellular telephone text message.
21 Except as otherwise provided in the Telemarketer Restriction Act,
22 the registry is privileged and confidential and not subject to the
23 Oklahoma Open Records Act.

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1 SECTION 7. AMENDATORY Section 6, Chapter 72, O.S.L.
2 2002, as amended by Section 3, Chapter 357, O.S.L. 2003 (15 O.S.
3 Supp. 2010, Section 775B.6), is amended to read as follows:

4 Section 775B.6 A. No telemarketer shall make or cause to be
5 made any unsolicited telemarketing sales call or message, including,
6 but not limited to, a cellular telephone text message, to any
7 consumer more than thirty (30) days after the consumer's telephone
8 number or numbers first appear on the registry made available by the
9 Attorney General pursuant to the Telemarketer Restriction Act.

10 B. Willful violation of subsection A of this section shall be
11 an unlawful telemarketing practice and a violation of the Oklahoma
12 Consumer Protection Act; provided, a call to a consumer with whom
13 the caller has an established business relationship or a call or
14 cellular telephone text message to a consumer whose number has been
15 removed from the registry shall not be a violation of the
16 Telemarketer Restriction Act.

17 C. In lieu of bringing an action under the Oklahoma Consumer
18 Protection Act, the Attorney General may, in cases where the
19 telemarketer is able to demonstrate that the violation occurred
20 notwithstanding policies of the telemarketer that were an integral
21 part of the training of the individual or individuals responsible
22 for the violation, assess an administrative fine. The Attorney
23 General shall, pursuant to the Administrative Procedures Act, adopt
24 and promulgate rules establishing a schedule of increasing fines to

1 be assessed pursuant to this subsection for multiple and repeated
2 violations.

3 SECTION 8. AMENDATORY 15 O.S. 2001, Section 752, as last
4 amended by Section 1, Chapter 61, O.S.L. 2003 (15 O.S. Supp. 2010,
5 Section 752), is amended to read as follows:

6 Section 752. As used in the Oklahoma Consumer Protection Act:

7 1. "Person" means a natural person, corporation, trust,
8 partnership, incorporated or unincorporated association, or any
9 other legal entity;

10 2. "Consumer transaction" means the advertising, offering for
11 sale or purchase, sale, purchase, or distribution of any services or
12 any property, tangible or intangible, real, personal, or mixed, or
13 any other article, commodity, or thing of value wherever located,
14 for purposes that are personal, household, or business oriented;

15 3. "Credit card" means any instrument or device, whether known
16 as a credit card, credit plate, charge plate or by any other name,
17 issued with or without fee by an issuer for the use of the
18 cardholder in obtaining money, goods, services or anything else of
19 value on credit. All credit cards lawfully issued shall be
20 considered the property of the cardholders or the issuer for all
21 purposes;

22 4. "Debit card" means any instrument or device, whether known
23 as a debit card or by any other name, issued with or without fee by
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1 an issuer for the use of the cardholder in depositing, obtaining or
2 transferring funds from a consumer banking electronic facility;

3 5. "Documentary material" means the original or a copy of any
4 book, record, report, memorandum, paper, communication, tabulation,
5 map, chart, photograph, mechanical transcription, or other tangible
6 document or recording, wherever located;

7 6. "Examination" when used in reference to documentary material
8 includes the inspection, study, or copying of any such material, and
9 the taking of testimony under oath, or acknowledgment in respect to
10 any such documentary material or copy thereof;

11 7. "Merchandise" includes any object, ware, good, commodity,
12 intangible, real estate, or service;

13 8. "Closing out sale" means any offer to sell, or actual sale,
14 to the public of goods, wares, or merchandise on the implied or
15 direct representation that the sale is in anticipation of the
16 termination of a business at its present location, or that the sale
17 is being held other than in the ordinary course of business. It
18 also shall mean but shall not be limited to any sale held or
19 advertised as a "closing out sale", "going out of business sale",
20 "discontinuance of business sale", "quitting business sale", "sell
21 out", "liquidation", "loss of lease sale", "must vacate sale",
22 "forced out of business sale", "fire sale", "smoke and water damage
23 sale", "adjustment sale", "creditor's sale", "bankrupt sale",
24 "insolvent sale", "mortgage sale", or other like or similar title;

1 9. "Advertisement" means any advertisement or announcement
2 published in the news media including but not limited to the radio,
3 television, newspapers, handbills, and mailers;

4 10. "License" means the written authorization issued by the
5 court clerk of the district court in any county in this state to any
6 person to conduct a closing out sale;

7 11. "Clerk" means the court clerk of the district court of any
8 county of this state in which a person applying for a license
9 intends to conduct a closing out sale;

10 12. "Automatic dial announcing device" means automatic
11 equipment that:

- 12 a. stores telephone numbers to be called, or has a random
13 or sequential number generator capable of producing
14 numbers to be called,
- 15 b. conveys a prerecorded or synthesized voice message to
16 the number called, and
- 17 c. is used for the purpose of offering any goods or
18 services for sale or conveying information regarding
19 such goods or services;

20 13. "Deceptive trade practice" means a misrepresentation,
21 omission or other practice that has deceived or could reasonably be
22 expected to deceive or mislead a person to the detriment of that
23 person. Such a practice may occur before, during or after a
24 consumer transaction is entered into and may be written or oral;

1 14. "Unfair trade practice" means any practice which offends
2 established public policy or if the practice is immoral, unethical,
3 oppressive, unscrupulous or substantially injurious to consumers;

4 15. "Cemetery" means any land or structure in this state
5 dedicated to or used, or intended to be used, for the interment of
6 human remains; and

7 16. "Deceptive use of another's name in notification or
8 solicitation" occurs when a business, or a person acting on its
9 behalf, engages in the following activity:

- 10 a. through advertisement, solicitation or other
11 notification, either verbally or through any other
12 means, informs a consumer of the availability of any
13 type of goods or services that are not free,
- 14 b. the name of an unrelated and unaffiliated person is
15 mentioned in any manner,
- 16 c. the goods or services mentioned are not actually
17 provided by the unrelated and unaffiliated person
18 whose name is mentioned,
- 19 d. the business on whose behalf the notification or
20 solicitation is made does not have a consensual right
21 to mention the name of the unrelated and unaffiliated
22 person, and
- 23 e. neither the actual name nor trade name of the business
24 on whose behalf the notification or solicitation is

1 being made is stated, nor the actual name or trade
2 name of any actual provider of the goods or services
3 is stated, so as to clearly identify for the consumer
4 a name that is distinguishable and separate from the
5 name of the unrelated and unaffiliated person whose
6 name is mentioned in any manner in the notification or
7 solicitation, and thereby a misleading implication or
8 ambiguity is created, such that a consumer who is the
9 recipient of the advertisement, solicitation or
10 notification may reasonably but erroneously believe:

11 (1) that the goods or services whose availability is
12 mentioned are made available by or through the
13 unrelated and unaffiliated person whose name is
14 mentioned, or

15 (2) that the unrelated and unaffiliated person whose
16 name is mentioned is the one communicating with
17 the consumer; and

18 17. "Consumer laws" means the Oklahoma Consumer Protection Act
19 as well as the following: Section 1451 (Embezzlement), Section 1502
20 (Deceptive Advertising), Sections 1533.1 and 1533.2 (False
21 personation), Sections 1541.1 and 1541.2 (Obtaining or attempting to
22 obtain property by trick or deception), Section 1550.2 (Use of
23 credit and debit cards without consent), Sections 1550.21 through
24 1550.43 (Oklahoma Credit Card Crime Act of 1970 and false

1 identification) and Sections 1951 through 1981 (Oklahoma Computer
2 Crimes Act and unlawful reproduction of recordings) of Title 21 of
3 the Oklahoma Statutes.

4 SECTION 9. AMENDATORY 15 O.S. 2001, Section 753, as last
5 amended by Section 2, Chapter 61, O.S.L. 2003 (15 O.S. Supp. 2010,
6 Section 753), is amended to read as follows:

7 Section 753. A person engages in a practice which is declared
8 to be unlawful under the Oklahoma Consumer Protection Act, Section
9 751 et seq. of this title, when, in the course of the person's
10 business, the person:

11 1. Represents, knowingly or with reason to know, that the
12 subject of a consumer transaction is of a particular make or brand,
13 when it is of another;

14 2. Makes a false or misleading representation, knowingly or
15 with reason to know, as to the source, sponsorship, approval, or
16 certification of the subject of a consumer transaction;

17 3. Makes a false or misleading representation, knowingly or
18 with reason to know, as to affiliation, connection, association
19 with, or certification by another;

20 4. Makes a false or misleading representation or designation,
21 knowingly or with reason to know, of the geographic origin of the
22 subject of a consumer transaction;

23 5. Makes a false representation, knowingly or with reason to
24 know, as to the characteristics, ingredients, uses, benefits,

1 alterations, or quantities of the subject of a consumer transaction
2 or a false representation as to the sponsorship, approval, status,
3 affiliation or connection of a person therewith;

4 6. Represents, knowingly or with reason to know, that the
5 subject of a consumer transaction is original or new if the person
6 knows that it is reconditioned, reclaimed, used, or secondhand;

7 7. Represents, knowingly or with reason to know, that the
8 subject of a consumer transaction is of a particular standard, style
9 or model, if it is of another;

10 8. Advertises, knowingly or with reason to know, the subject of
11 a consumer transaction with intent not to sell it as advertised;

12 9. Advertises, knowingly or with reason to know, the subject of
13 a consumer transaction with intent not to supply reasonably expected
14 public demand, unless the advertisement discloses a limitation of
15 quantity;

16 10. Advertises under the guise of obtaining sales personnel
17 when in fact the purpose is to sell the subject of a consumer
18 transaction to the sales personnel applicants;

19 11. Makes false or misleading statements of fact, knowingly or
20 with reason to know, concerning the price of the subject of a
21 consumer transaction or the reason for, existence of, or amounts of
22 price reduction;

23 12. Employs "bait and switch" advertising, which consists of an
24 offer to sell the subject of a consumer transaction which the seller

1 does not intend to sell, which advertising is accompanied by one or
2 more of the following practices:

- 3 a. refusal to show the subject of a consumer transaction
4 advertised,
- 5 b. disparagement of the advertised subject of a consumer
6 transaction or the terms of sale,
- 7 c. requiring undisclosed tie-in sales or other
8 undisclosed conditions to be met prior to selling the
9 advertised subject of a consumer transaction,
- 10 d. refusal to take orders for the subject of a consumer
11 transaction advertised for delivery within a
12 reasonable time,
- 13 e. showing or demonstrating defective subject of a
14 consumer transaction which the seller knows is
15 unusable or impracticable for the purpose set forth in
16 the advertisement,
- 17 f. accepting a deposit for the subject of a consumer
18 transaction and subsequently charging the buyer for a
19 higher priced item, or
- 20 g. willful failure to make deliveries of the subject of a
21 consumer transaction within a reasonable time or to
22 make a refund therefor upon the request of the
23 purchaser;

- 1 13. Conducts a closing out sale without having first obtained a
2 license as required in this act, Section 751 et seq. of this title;
- 3 14. Resumes the business for which the closing out sale was
4 conducted within one (1) year from the expiration date of the
5 closing out sale license;
- 6 15. Falsely states, knowingly or with reason to know, that
7 services, replacements or repairs are needed;
- 8 16. Violates any provision of the Oklahoma Health Spa Act,
9 Section 2000 et seq. of Title 59 of the Oklahoma Statutes;
- 10 17. Violates any provision of the Home Repair Fraud Act,
11 Section 765.1 et seq. of this title;
- 12 18. Violates any provision of the Consumer Disclosure of Prizes
13 and Gifts Act, Section 996.1 et seq. of Title 21 of the Oklahoma
14 Statutes;
- 15 19. Violates any provision of Section 755.1 of this title or
16 Section 1847a of Title 21 of the Oklahoma Statutes;
- 17 20. Commits an unfair or deceptive trade practice as defined in
18 Section 752 of this title;
- 19 21. Violates any provision of Section 169.1 of Title 8 of the
20 Oklahoma Statutes in fraudulently or intentionally failing or
21 refusing to honor the contract to provide certain cemetery services
22 specified in the contract entered into pursuant to the Perpetual
23 Care Fund Act;

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1 22. Misrepresents a mail solicitation as an invoice or as a
2 billing statement;

3 23. Offers to purchase a mineral or royalty interest through an
4 offer that resembles an oil and gas lease and that the consumer
5 believed was an oil and gas lease;

6 24. Refuses to honor gift certificates, warranties, or any
7 other merchandise offered by a person in a consumer transaction
8 executed prior to the closing of the business of the person without
9 providing a purchaser a means of redeeming such merchandise or
10 ensuring the warranties offered will be honored by another person;

11 25. Knowingly causes a charge to be made by any billing method
12 to a consumer for services which the person knows was not authorized
13 in advance by the consumer;

14 26. Knowingly causes a charge to be made by any billing method
15 to a consumer for a product or products which the person knows was
16 not authorized in advance by the consumer;

17 27. Violates Section 752A of this title;

18 28. Makes deceptive use of another's name in notification or
19 solicitation, as defined in Section 752 of this title;

20 29. Falsely states or implies that any person, product or
21 service is recommended or endorsed by a named third person; ~~or~~

22 30. Falsely states that information about the consumer,
23 including but not limited to, the name, address or phone number of
24

1 the consumer has been provided by a third person, whether that
2 person is named or unnamed;

3 31. Acting as a debt collector, contacts a debtor and threatens
4 to file a suit against the debtor over a debt barred by the statute
5 of limitations which has passed for filing suit for such debt; or

6 32. Acting as a debt collector, contacts a debtor and uses
7 obscene or profane language to collect a debt.

8 SECTION 10. This act shall become effective July 1, 2011.

9 SECTION 11. It being immediately necessary for the preservation
10 of the public peace, health and safety, an emergency is hereby
11 declared to exist, by reason whereof this act shall take effect and
12 be in full force from and after its passage and approval."

13 Passed the House of Representatives the 25th day of April, 2011.

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16 _____
17 Presiding Officer of the House of
Representatives

18 Passed the Senate the ____ day of _____, 2011.

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21 _____
22 Presiding Officer of the Senate

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