OKLAHOMA STATE SENATE
CONFERENCE
COMMITTEE REPORT

May 12, 2011

Mr. President:

Mr. Speaker:

The Conference Committee, to which was referred

SB 398

By: Stanislawski of the Senate and Martin (Steve) et al of the House

Title: Telephone solicitation; prohibiting unsolicited telemarketer text messages. Effective date. Emergency.

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together with Engrossed House Amendments thereto, beg leave to report that we have had the same under consideration and herewith return the same with the following recommendations:

1. That the House recede from all Amendments.
2. That the following Conference Committee Substitute be adopted:

Respectfully submitted,

SENATE CONFEREES

Stanislawski

Crain

Newberry

Wilson

Marlatt

Johnson (Constance)

HOUSE CONFEREES

Conference Committee on Public Safety, Judiciary and Military Affairs

MAY 18 2011
ADOPTED & PASSED
Senate Action_____Date_____House Action _____ _____ Date_____

HOUSE CONFEREES

Jordan _____

Martin (Steve) _____

McCullough _____

Moore _____

Morrissette _____

Roan _____

Roberts (Dustin) _____

Schwartz _____

Sherrer _____

Sullivan _____

Tibbs _____

Wesselhoft _____

Williams _____

STATE OF OKLAHOMA

1st Session of the 53rd Legislature (2011)

CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 398 By: Stanislawski of the Senate

and

Martin (Steve), Bennett and
Tibbs of the House

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to telephone solicitation; amending 15 O.S. 2001, Section 755.2, which relates to unsolicited calls by automatic dialing device; expanding voidable contract options for using certain text message device; amending 15 O.S. 2001, Section 775A.1, which relates to Legislative findings; clarifying certain findings; amending 15 O.S. 2001, Section 775A.2, which relates to 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 scope of registry to prohibit unsolicited text messaging; amending Section 4, Chapter 72, O.S.L. 2002, as amended by Section 2, Chapter 357, O.S.L. 2003 (15 O.S. Supp. 2010, Section 775B.4), which relates to no-telemarketer-sales-call registry; expanding scope of registry; amending Section 6, Chapter 72, O.S.L. 2002, as amended by Section 3, Chapter 357, O.S.L. 2003 (15 O.S. Supp. 2010, Section 775B.6), which relates to violations; including unsolicited text messaging in certain violation; expanding certain exception to violation; amending 15 O.S. 2001, Sections 752 and 753, as last amended by Sections 1

and 2, Chapter 61, O.S.L. 2003 (15 O.S. Supp. 2010, Sections 752 and 753), which relate to the Oklahoma Consumer Protection Act; defining term; adding unlawful practices; providing an effective date; and declaring an emergency.

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

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

Section 755.2. A contract or agreement to purchase any consumer goods or services pursuant to an unsolicited telephone call <u>or message, including a cellular telephone call or text message,</u> made by an automatic dial announcing device conveying a prerecorded or synthesized voice message <u>or an automatic dialing device with electronic text message delivery capabilities</u> 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.

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

Section 775A.1. The Legislature hereby finds, determines and declares that the use of telephones for commercial solicitation<u>, including, but not limited to, cellular telephone text messages,</u> is rapidly increasing; that this form of communication offers unique benefits, but entails special risks and poses the potential for abuse; that the Legislature finds that the widespread practice of

fraudulent and deceptive commercial telephone solicitation has caused substantial financial losses to thousands of consumers and, particularly, elderly, homebound and otherwise vulnerable consumers, and is a matter vitally affecting the public interest; and, therefore, that the general welfare of the public and the protection of the integrity of the telemarketing industry requires statutory regulation of the commercial use of telephones.

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

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

1. "Commercial telephone seller" or "seller" means a person who, in the course of such person's business, vocation or occupation, on the person's own behalf or on behalf of another person, causes or attempts to cause a commercial telephone solicitation to be made; except that "commercial telephone seller" or "seller" does not include ~~the following~~ a telephone call made by:

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

(1) the security is either registered as required by Section ~~301~~ 1-301 of Title 71 of the Oklahoma Statutes, or exempt from registration under Section ~~401~~ 1-201 of Title 71 of the Oklahoma

Statutes and general or public solicitation is not prohibited or the security is a federal covered security for which a notice filing has been made under Section ~~305.2~~ 1-302 of Title 71 of the Oklahoma Statutes, and

(2) the person is registered as required by Section ~~201~~ 1-401, 1-402, 1-403 or 1-404 of Title 71 of the Oklahoma Statutes as a broker-dealer as defined in Section ~~2~~ 1-102 of Title 71 of the Oklahoma Statutes, an agent as defined in Section ~~2~~ 1-102 of Title 71 of the Oklahoma Statutes, an investment adviser as defined in Section ~~2~~ 1-102 of Title 71 of the Oklahoma Statutes, or an investment adviser representative as defined in Section ~~2~~ 1-102 of Title 71 of the Oklahoma Statutes, unless expressly excluded from such definitions, or such person is exempted from registration under Section ~~201~~ 1-401, 1-402, 1-403 or 1-404 of Title 71 of the Oklahoma Statutes,

b. a person soliciting the sale of any book, record, audio tape, compact disc or video if the person allows the purchaser to review the merchandise without obligation for at least seven (7) days and provides a

full refund for the return of undamaged merchandise within thirty (30) days or if the person solicits such sale on behalf of a membership club operating in conformity with 16 Code of Federal Regulations 425,

c. a person ~~making telephone calls to~~ soliciting a residential customer for the sole purpose of polling or soliciting the expression of ideas, opinions or votes, or a person soliciting solely for a political or religious cause or purpose,

d. a paid solicitor or charitable organization which is required to and which has complied with the notice and reporting requirements of Section 552.3 of Title 18 of the Oklahoma Statutes or a person who is excluded from such notice and reporting requirements by Section 552.4 of Title 18 of the Oklahoma Statutes,

e. a supervised financial organization, as defined in Section 1-301 of Title 14A of the Oklahoma Statutes, and its employees, when acting within the scope of their employment,

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

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

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

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

j. a person soliciting telephone service, or licensed or franchised cable television service, which is billed and paid on a daily, weekly, or monthly basis and which can be canceled at any time without further obligation to the purchaser,

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

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

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

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

o. an issuer or a subsidiary of an issuer that has a class of securities which is subject to Section 12 of the federal "Securities Exchange Act of 1934", 15 U.S.C. 781, and which is either registered or exempt from registration under paragraph (A), (B), (C), (E), (F), (G) or (H) of subsection (g) (2) of that section,

p. a person who has been operating for at least three (3) years a retail business establishment in Oklahoma under the same name as that used in connection with the solicitation of sales by telephone if, on a

continuing basis, the majority of the seller's business involves the purchaser receiving the seller's goods and services at the seller's business location,

q. any telephone marketing service company which provides telemarketing sales services under written contract to sellers and has been operating continuously for at least five (5) years under the same business name and seventy-five percent (75%) or more of its services are performed on behalf of sellers exempt from this section. Nothing in this paragraph shall be construed to exempt any commercial telephone seller that contracts with a telephone marketing service company for telemarketing sales service from the requirements set forth in Section 775A.3 of this title,

r. a person soliciting business solely from business purchasers who have previously purchased identical or similar goods or services from the business enterprise on whose behalf the person is calling,

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

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

u. a person or affiliate of a person who offers or sells products or services by means of a cellular telephone text message only to persons who have affirmatively indicated their opt-in consent to receive cellular telephone text messages for such purpose from such person or affiliate;

2. "Commercial telephone solicitation" means:

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 4. AMENDATORY 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), is amended to read as follows:

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

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

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

3. “Established business relationship” means a prior relationship formed within the preceding twenty-four (24) months or an existing relationship formed by a voluntary two-way communication

between a person or entity and a residential subscriber with or without an exchange of consideration, on the basis of an inquiry, application, purchase or transaction by the residential subscriber regarding products or services offered by such person or entity, which relationship has not been previously terminated by either party;

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

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

6. "Telemarketing" means any plan, program, or campaign which is conducted for commercial purposes, by use of one or more telephones or electronic messaging devices and which involves a telephone call or message, including, but not limited to, a cellular telephone text message, initiated by a telemarketer to a consumer located within this state at the time of the call or message; "telemarketing" may include use of random dialing or other devices for such purposes and use of recorded or simulated voices or automated electronic text messages delivery devices. "Telemarketing" does not include a telephone call which is made for the sole purpose

of arranging a subsequent face-to-face meeting between a salesperson and the consumer.

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

Section 775B.3. ~~Not later than January 1, 2003, the~~ The Attorney General shall establish, and thereafter maintain, a statewide registry which shall contain a list of consumers who desire not to receive unsolicited telemarketing sales calls or messages, including, but not limited to, a cellular telephone text message. The Attorney General may, pursuant to The Oklahoma Central Purchasing Act, contract with a private vendor to establish and maintain the registry.

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

Section 775B.4. The Attorney General shall publicize notice to consumers of the establishment of the no-telemarketing-sales-call registry and may provide, upon request, explanatory information concerning the provisions of the Telemarketer Restriction Act. Any consumer who desires to be included in the listing shall notify the Attorney General by calling a toll-free number provided by the Attorney General, or in any other manner, and at such times, as the Attorney General may prescribe, which may include notification via the Internet. The number or numbers of a consumer listed in the

registry shall be removed from the registry either by the consumer calling a toll-free number provided by the Attorney General or upon written request by the consumer. The Attorney General shall implement a procedure to verify a consumer request to be added or removed from the registry. The Attorney General shall update the registry not less than quarterly and shall make the registry available to telemarketers by such means and for such fees as are determined by the Attorney General pursuant to the Administrative Procedures Act. The Attorney General is authorized to forward all consumer requests to be included in the registry to the Federal Trade Commission, Federal Communications Commission, or any other agency of the federal government charged with the establishment and maintenance of a nationwide registry of consumers who desire not to receive unsolicited telemarketing sales calls <u>or messages, including, but not limited to, a cellular telephone text message</u>. Except as otherwise provided in the Telemarketer Restriction Act, the registry is privileged and confidential and not subject to the Oklahoma Open Records Act.

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

Section 775B.6. A. No telemarketer shall make or cause to be made any unsolicited telemarketing sales call <u>or message, including, but not limited to, a cellular telephone text message,</u> to any

consumer more than thirty (30) days after the consumer's telephone number or numbers first appear on the registry made available by the Attorney General pursuant to the Telemarketer Restriction Act.

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

C. In lieu of bringing an action under the Oklahoma Consumer Protection Act, the Attorney General may, in cases where the telemarketer is able to demonstrate that the violation occurred notwithstanding policies of the telemarketer that were an integral part of the training of the individual or individuals responsible for the violation, assess an administrative fine. The Attorney General shall, pursuant to the Administrative Procedures Act, adopt and promulgate rules establishing a schedule of increasing fines to be assessed pursuant to this subsection for multiple and repeated violations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. stores telephone numbers to be called, or has a random or sequential number generator capable of producing numbers to be called,

b. conveys a prerecorded or synthesized voice message to the number called, and

c. is used for the purpose of offering any goods or services for sale or conveying information regarding such goods or services;

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

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

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

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

a. through advertisement, solicitation or other notification, either verbally or through any other means, informs a consumer of the availability of any type of goods or services that are not free,

b. the name of an unrelated and unaffiliated person is mentioned in any manner,

c. the goods or services mentioned are not actually provided by the unrelated and unaffiliated person whose name is mentioned,

d. the business on whose behalf the notification or solicitation is made does not have a consensual right to mention the name of the unrelated and unaffiliated person, and

e. neither the actual name nor trade name of the business on whose behalf the notification or solicitation is being made is stated, nor the actual name or trade name of any actual provider of the goods or services is stated, so as to clearly identify for the consumer a name that is distinguishable and separate from the name of the unrelated and unaffiliated person whose name is mentioned in any manner in the notification or

solicitation, and thereby a misleading implication or ambiguity is created, such that a consumer who is the recipient of the advertisement, solicitation or notification may reasonably but erroneously believe:

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

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

17. "Consumer laws" means the Oklahoma Consumer Protection Act as well as the following: Section 1451 (Embezzlement), Section 1502 (Deceptive Advertising), Sections 1533.1 and 1533.2 (False personation), Sections 1541.1 and 1541.2 (Obtaining or attempting to obtain property by trick or deception), Section 1550.2 (Use of credit and debit cards without consent), Sections 1550.21 through 1550.43 (Oklahoma Credit Card Crime Act of 1970 and false identification) and Sections 1951 through 1981 (Oklahoma Computer Crimes Act and unlawful reproduction of recordings) of Title 21 of the Oklahoma Statutes.

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

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

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

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

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

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

5. Makes a false representation, knowingly or with reason to know, as to the characteristics, ingredients, uses, benefits, alterations, or quantities of the subject of a consumer transaction or a false representation as to the sponsorship, approval, status, affiliation or connection of a person therewith;

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

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

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

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

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

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

12. Employs "bait and switch" advertising, which consists of an offer to sell the subject of a consumer transaction which the seller does not intend to sell, which advertising is accompanied by one or more of the following practices:

a. refusal to show the subject of a consumer transaction advertised,

b. disparagement of the advertised subject of a consumer transaction or the terms of sale,

c. requiring undisclosed tie-in sales or other undisclosed conditions to be met prior to selling the advertised subject of a consumer transaction,

d. refusal to take orders for the subject of a consumer transaction advertised for delivery within a reasonable time,

e. showing or demonstrating defective subject of a consumer transaction which the seller knows is unusable or impracticable for the purpose set forth in the advertisement,

f. accepting a deposit for the subject of a consumer transaction and subsequently charging the buyer for a higher priced item, or

g. willful failure to make deliveries of the subject of a consumer transaction within a reasonable time or to make a refund therefor upon the request of the purchaser;

13. Conducts a closing out sale without having first obtained a license as required in this act, Section 751 et seq. of this title;

14. Resumes the business for which the closing out sale was conducted within one (1) year from the expiration date of the closing out sale license;

15. Falsely states, knowingly or with reason to know, that services, replacements or repairs are needed;

16. Violates any provision of the Oklahoma Health Spa Act, Section 2000 et seq. of Title 59 of the Oklahoma Statutes;

17. Violates any provision of the Home Repair Fraud Act, Section 765.1 et seq. of this title;

18. Violates any provision of the Consumer Disclosure of Prizes and Gifts Act, Section 996.1 et seq. of Title 21 of the Oklahoma Statutes;

19. Violates any provision of Section 755.1 of this title or Section 1847a of Title 21 of the Oklahoma Statutes;

20. Commits an unfair or deceptive trade practice as defined in Section 752 of this title;

21. Violates any provision of Section 169.1 of Title 8 of the Oklahoma Statutes in fraudulently or intentionally failing or refusing to honor the contract to provide certain cemetery services specified in the contract entered into pursuant to the Perpetual Care Fund Act;

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

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

24. Refuses to honor gift certificates, warranties, or any other merchandise offered by a person in a consumer transaction executed prior to the closing of the business of the person without

providing a purchaser a means of redeeming such merchandise or ensuring the warranties offered will be honored by another person;

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

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

27. Violates Section 752A of this title;

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

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

30. Falsely states that information about the consumer, including but not limited to, the name, address or phone number of the consumer has been provided by a third person, whether that person is named or unnamed;

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

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

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

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

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