

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 SENATE BILL 398

By: Stanislawski

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6 AS INTRODUCED

7 An Act relating to telephone solicitation; amending
8 15 O.S. 2001, Section 755.2, which relates to
9 unsolicited calls by automatic dialing device;
10 expanding voidable contract options for using certain
11 text message device; amending 15 O.S. 2001, Section
12 775A.1, which relates to Legislative findings;
13 clarifying certain findings; amending 15 O.S. 2001,
14 Section 775A.2, which relates to definitions;
15 modifying certain definitions; amending Section 2,
16 Chapter 72, O.S.L. 2002, as amended by Section 1,
17 Chapter 357, O.S.L. 2003 (15 O.S. Supp. 2010, Section
18 775B.2), which relates to definitions in the
19 Telemarketer Restriction Act; expanding certain
20 definitions to include cellular telephone text
21 messages; amending Section 3, Chapter 72, O.S.L. 2002
22 (15 O.S. Supp. 2010, Section 775B.3), which relates
23 to telemarketing registry; expanding scope of
24 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; providing an effective date;
and declaring an emergency.

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

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

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

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

14 Section 775A.1. The Legislature hereby finds, determines and
15 declares that the use of telephones for commercial solicitation,
16 including, but not limited to, cellular telephone text messages, is
17 rapidly increasing; that this form of communication offers unique
18 benefits, but entails special risks and poses the potential for
19 abuse; that the Legislature finds that the widespread practice of
20 fraudulent and deceptive commercial telephone solicitation has
21 caused substantial financial losses to thousands of consumers and,
22 particularly, elderly, homebound and otherwise vulnerable consumers,
23 and is a matter vitally affecting the public interest; and,
24 therefore, that the general welfare of the public and the protection

1 of the integrity of the telemarketing industry requires statutory
2 regulation of the commercial use of telephones.

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

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

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

- 13 a. a person offering or selling a security as defined in
14 Section 2 of Title 71 of the Oklahoma Statutes if:
- 15 (1) the security is either registered as required by
16 Section 301 of Title 71 of the Oklahoma Statutes,
17 or exempt from registration under Section 401 of
18 Title 71 of the Oklahoma Statutes and general or
19 public solicitation is not prohibited or the
20 security is a federal covered security for which
21 a notice filing has been made under Section 305.2
22 of Title 71 of the Oklahoma Statutes, and
- 23 (2) the person is registered as required by Section
24 201 of Title 71 of the Oklahoma Statutes as a

1 broker-dealer as defined in Section 2 of Title 71
2 of the Oklahoma Statutes, an agent as defined in
3 Section 2 of Title 71 of the Oklahoma Statutes,
4 an investment adviser as defined in Section 2 of
5 Title 71 of the Oklahoma Statutes, or an
6 investment adviser representative as defined in
7 Section 2 of Title 71 of the Oklahoma Statutes,
8 unless expressly excluded from such definitions,
9 or such person is exempted from registration
10 under Section 201 of Title 71 of the Oklahoma
11 Statutes,

- 12 b. a person soliciting the sale of any book, record,
13 audio tape, compact disc or video if the person allows
14 the purchaser to review the merchandise without
15 obligation for at least seven (7) days and provides a
16 full refund for the return of undamaged merchandise
17 within thirty (30) days or if the person solicits such
18 sale on behalf of a membership club operating in
19 conformity with 16 Code of Federal Regulations 425,
- 20 c. a person ~~making telephone calls to~~ soliciting a
21 residential customer for the sole purpose of polling
22 or soliciting the expression of ideas, opinions or
23 votes, or a person soliciting solely for a political
24 or religious cause or purpose,

- 1 d. a paid solicitor or charitable organization which is
2 required to and which has complied with the notice and
3 reporting requirements of Section 552.3 of Title 18 of
4 the Oklahoma Statutes or a person who is excluded from
5 such notice and reporting requirements by Section
6 552.4 of Title 18 of the Oklahoma Statutes,
- 7 e. a supervised financial organization, as defined in
8 Section 1-301 of Title 14A of the Oklahoma Statutes,
9 and its employees, when acting within the scope of
10 their employment,
- 11 f. a supervised lender, as defined in subsection (2) of
12 Section 3-501 of Title 14A of the Oklahoma Statutes,
13 and its agents and employees, when acting within the
14 scope of their employment,
- 15 g. a person or an affiliate of a person who is regulated
16 by the Insurance Commission pursuant to Title 36 of
17 the Oklahoma Statutes,
- 18 h. a person soliciting without the intent to complete and
19 who does not in fact complete the sales transaction
20 during the telephone solicitation or another telephone
21 solicitation and who only completes the sales
22 transaction at a later face-to-face meeting between
23 the solicitor and the prospective purchaser, excluding
24 a face-to-face meeting, the sole purpose of which is

1 to collect the payment or deliver any item purchased,
2 or a person soliciting a purchaser with whom the
3 person has had a previous face-to-face meeting in the
4 course of such person's business,

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

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

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

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

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

21 n. a person who initially contacts the purchaser with a
22 retail sales catalog requesting a telephone call
23 response, when the person allows the purchaser to
24 review the merchandise without obligation for at least

1 seven (7) days and provides a full refund for the
2 return of undamaged merchandise within thirty (30)
3 days after receipt of the returned merchandise,

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

10 p. a person who has been operating for at least three (3)
11 years a retail business establishment in Oklahoma
12 under the same name as that used in connection with
13 the solicitation of sales by telephone if, on a
14 continuing basis, the majority of the seller's
15 business involves the purchaser receiving the seller's
16 goods and services at the seller's business location,

17 q. any telephone marketing service company which provides
18 telemarketing sales services under written contract to
19 sellers and has been operating continuously for at
20 least five (5) years under the same business name and
21 seventy-five percent (75%) or more of its services are
22 performed on behalf of sellers exempt from this
23 section. Nothing in this paragraph shall be construed
24 to exempt any commercial telephone seller that

1 contracts with a telephone marketing service company
2 for telemarketing sales service from the requirements
3 set forth in Section 775A.3 of this title,

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

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

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

14 2. "Commercial telephone solicitation" means:

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

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

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

6 (2) a loan, credit card or other extension of credit
7 is offered to a purchaser who has not previously
8 purchased from the person initiating the
9 communication, and a telephone call response from
10 the intended purchaser is invited, or

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

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

23 3. "Pay-per-call" or "pay-per-text" means the use of a
24 telephone number with a 900 prefix or any other prefix under which

1 liability for the service or product provided attaches to the
2 telephone bill of the individual calling such number;

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

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

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

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

16 SECTION 4. AMENDATORY Section 2, Chapter 72, O.S.L.
17 2002, as amended by Section 1, Chapter 357, O.S.L. 2003 (15 O.S.
18 Supp. 2010, Section 775B.2), is amended to read as follows:

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

20 1. "Commercial purposes" means relating to the sale or offer
21 for sale of goods or services. "Commercial purposes" does not mean
22 solicitation of funds or other support for a charitable or religious
23 activity; political candidate, cause, or organization; or any

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1 activity of a not-for-profit entity organized pursuant to Section
2 501(c)(3) of the Internal Revenue Code;

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

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

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

19 5. "Telemarketer" means any person who, for commercial
20 purposes, initiates a telemarketing sales call or message,
21 including, but not limited to, a cellular telephone text message,
22 to a consumer located in this state or any person who directly
23 controls or supervises the conduct of a telemarketer; and
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1 6. "Telemarketing" means any plan, program, or campaign which
2 is conducted for commercial purposes, by use of one or more
3 telephones or electronic messaging devices and which involves a
4 telephone call or message, including but not limited to, a cellular
5 telephone text message, initiated by a telemarketer to a consumer
6 located within this state at the time of the call or message;
7 "telemarketing" may include use of random dialing or other devices
8 for such purposes and use of recorded or simulated voices or
9 automated electronic text messages delivery devices. "Telemarketing"
10 does not include a telephone call which is made for the sole purpose
11 of arranging a subsequent face-to-face meeting between a salesperson
12 and the consumer.

13 SECTION 5. AMENDATORY Section 3, Chapter 72, O.S.L. 2002
14 (15 O.S. Supp. 2010, Section 775B.3), is amended to read as follows:

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

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

4 Section 775.4. The Attorney General shall publicize notice to
5 consumers of the establishment of the no-telemarketing-sales-call
6 registry and may provide, upon request, explanatory information
7 concerning the provisions of the Telemarketer Restriction Act. Any
8 consumer who desires to be included in the listing shall notify the
9 Attorney General by calling a toll-free number provided by the
10 Attorney General, or in any other manner, and at such times, as the
11 Attorney General may prescribe, which may include notification via
12 the Internet. The number or numbers of a consumer listed in the
13 registry shall be removed from the registry either by the consumer
14 calling a toll-free number provided by the Attorney General or upon
15 written request by the consumer. The Attorney General shall
16 implement a procedure to verify a consumer request to be added or
17 removed from the registry. The Attorney General shall update the
18 registry not less than quarterly and shall make the registry
19 available to telemarketers by such means and for such fees as are
20 determined by the Attorney General pursuant to the Administrative
21 Procedures Act. The Attorney General is authorized to forward all
22 consumer requests to be included in the registry to the Federal
23 Trade Commission, Federal Communications Commission, or any other
24 agency of the federal government charged with the establishment and

1 maintenance of a nationwide registry of consumers who desire not to
2 receive unsolicited telemarketing sales calls or messages, including
3 but not limited to, a cellular telephone text message. Except as
4 otherwise provided in the Telemarketer Restriction Act, the registry
5 is privileged and confidential and not subject to the Oklahoma Open
6 Records Act.

7 SECTION 7. AMENDATORY Section 6, Chapter 72, O.S.L.
8 2002, as amended by Section 3, Chapter 357, O.S.L. 2003 (15 O.S.
9 Supp. 2010, Section 775B.6), is amended to read as follows:

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

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

23 C. In lieu of bringing an action under the Oklahoma Consumer
24 Protection Act, the Attorney General may, in cases where the

1 telemarketer is able to demonstrate that the violation occurred
2 notwithstanding policies of the telemarketer that were an integral
3 part of the training of the individual or individuals responsible
4 for the violation, assess an administrative fine. The Attorney
5 General shall, pursuant to the Administrative Procedures Act, adopt
6 and promulgate rules establishing a schedule of increasing fines to
7 be assessed pursuant to this subsection for multiple and repeated
8 violations.

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

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

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