

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 57th Legislature (2020)

4 HOUSE BILL 3081

 By: Hilbert and **Boles**

7 AS INTRODUCED

8 An Act relating to telemarketing practices; amending
9 15 O.S. 2011, Section 775A.4, which relates to
10 unlawful telemarketing practices; modifying acts
 constituting an unlawful telemarketing practice; and
 providing an effective date.

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

14 SECTION 1. AMENDATORY 15 O.S. 2011, Section 775A.4, is
15 amended to read as follows:

16 Section 775A.4 A. A commercial telephone seller engages in an
17 unlawful telemarketing practice when, in the course of any
18 commercial telephone solicitation, the seller:

19 1. Conducts business as a commercial telephone seller without
20 having registered with the Attorney General, as required by Section
21 775A.3 of this title;

22 2. Fails to allow the purchaser in any telephone sales
23 transaction to cancel any purchase or agreement to purchase goods,
24 services or property at any time before the expiration of three (3)

1 business days after the purchaser's receipt of such goods, services
2 or property by delivering or mailing to the commercial telephone
3 seller written notice of cancellation. Notice of cancellation, if
4 sent by mail, is deemed to be given as of the date the mailed notice
5 was postmarked;

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

10 a. if the purchaser has received goods or property from
11 the commercial telephone seller, other than an item
12 represented as free, the commercial telephone seller
13 shall refund all payments made by the purchaser within
14 thirty (30) days after the commercial telephone
15 seller's receipt of the returned goods or property,
16 and

17 b. if the purchaser has received services during the
18 course of a pay-per-call service call, which services
19 cannot, by their nature, be returned, the commercial
20 telephone seller is not required to refund payments to
21 the purchaser;

22 4. Fails to disclose to the purchaser during a telephone
23 solicitation that the purchaser has the cancellation rights set
24 forth in paragraph 2 of this subsection;

1 5. Misrepresents to any person that the person has won a
2 contest, sweepstakes or drawing, or that the person will receive
3 free goods, services or property;

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

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

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

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

22 10. Causes misleading information to be transmitted to
23 a recipient's caller identification service or device or to
24

1 otherwise misrepresent the origin of a telemarketing call. A
2 telemarketer does not violate this paragraph if the
3 telemarketer substitutes the name and telephone number of the
4 person on whose behalf the call is made for the telemarketer's name
5 and telephone number; or

6 11. Engages in any deceptive trade practice defined in Section
7 752 of this title.

8 B. Paragraphs 2 and 4 of subsection A of this section do not
9 apply to a transaction in which the consumer obtains a full refund
10 for the return of undamaged or unused goods or a cancellation of
11 services by giving notice to the seller within seven (7) days after
12 receipt by the consumer and the seller processes the refund or
13 cancellation within thirty (30) days after receipt of the returned
14 merchandise or the consumer's request for refund for services not
15 performed or a pro rata refund for any services not yet performed
16 for the consumer. The availability and terms of the return and
17 refund privilege shall be disclosed to the consumer orally by
18 telephone and in writing with any advertising or promotional
19 material or with the delivery of the product or service. If a
20 seller offers consumers an unconditional guarantee, a clear
21 disclosure of such guarantee by using the words "satisfaction
22 guaranteed", "free inspection" or "no-risk guarantee" satisfy the
23 disclosure requirements of this subsection.

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

5 D. Any violations of this act are violations of the Oklahoma
6 Consumer Protection Act.

7 SECTION 2. This act shall become effective November 1, 2020.

8
9 COMMITTEE REPORT BY: COMMITTEE ON UTILITIES, dated 02/27/2020 - DO
10 PASS, As Coauthored.