

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 53rd Legislature (2011)

4 COMMITTEE SUBSTITUTE
5 FOR ENGROSSED
6 SENATE BILL NO. 398

By: Stanislawski of the Senate

7 and

8 Martin (Steve) of the House

9
10 COMMITTEE SUBSTITUTE

11 An Act relating to telephone solicitation; amending
12 15 O.S. 2001, Section 755.2, which relates to
13 unsolicited calls by automatic dialing device;
14 expanding voidable contract options for using certain
15 text message device; amending 15 O.S. 2001, Section
16 775A.1, which relates to Legislative findings;
17 clarifying certain findings; amending 15 O.S. 2001,
18 Section 775A.2, which relates to definitions;
19 modifying certain definitions; amending Section 2,
20 Chapter 72, O.S.L. 2002, as amended by Section 1,
21 Chapter 357, O.S.L. 2003 (15 O.S. Supp. 2010, Section
22 775B.2), which relates to definitions in the
23 Telemarketer Restriction Act; expanding certain
24 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

1 messaging in certain violation; expanding certain
2 exception to violation; amending 15 O.S. 2001,
3 Sections 752 and 753, as last amended by Sections 1
4 and 2, Chapter 61, O.S.L. 2003 (15 O.S. Supp. 2010,
5 Sections 752 and 753), which relate to the Oklahoma
6 Consumer Protection Act; defining term; adding
7 unlawful practices; providing an effective date; and
8 declaring an emergency.

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

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

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

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

23 Section 775A.1 The Legislature hereby finds, determines and
24 declares that the use of telephones for commercial solicitation,
including, but not limited to, cellular telephone text messages, is

1 rapidly increasing; that this form of communication offers unique
2 benefits, but entails special risks and poses the potential for
3 abuse; that the Legislature finds that the widespread practice of
4 fraudulent and deceptive commercial telephone solicitation has
5 caused substantial financial losses to thousands of consumers and,
6 particularly, elderly, homebound and otherwise vulnerable consumers,
7 and is a matter vitally affecting the public interest; and,
8 therefore, that the general welfare of the public and the protection
9 of the integrity of the telemarketing industry requires statutory
10 regulation of the commercial use of telephones.

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

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

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

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

- 1 (1) the security is either registered as required by
2 Section ~~301~~ 1-301 of Title 71 of the Oklahoma
3 Statutes, or exempt from registration under
4 Section ~~401~~ 1-201 of Title 71 of the Oklahoma
5 Statutes and general or public solicitation is
6 not prohibited or the security is a federal
7 covered security for which a notice filing has
8 been made under Section ~~305.2~~ 1-302 of Title 71
9 of the Oklahoma Statutes, and
- 10 (2) the person is registered as required by Section
11 ~~201~~ 1-401, 1-402, 1-403 or 1-404 of Title 71 of
12 the Oklahoma Statutes as a broker-dealer as
13 defined in Section ~~2~~ 1-102 of Title 71 of the
14 Oklahoma Statutes, an agent as defined in Section
15 ~~2~~ 1-102 of Title 71 of the Oklahoma Statutes, an
16 investment adviser as defined in Section ~~2~~ 1-102
17 of Title 71 of the Oklahoma Statutes, or an
18 investment adviser representative as defined in
19 Section ~~2~~ 1-102 of Title 71 of the Oklahoma
20 Statutes, unless expressly excluded from such
21 definitions, or such person is exempted from
22 registration under Section ~~201~~ 1-401, 1-402, 1-
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1 403 or 1-404 of Title 71 of the Oklahoma
2 Statutes,

- 3 b. a person soliciting the sale of any book, record,
4 audio tape, compact disc or video if the person allows
5 the purchaser to review the merchandise without
6 obligation for at least seven (7) days and provides a
7 full refund for the return of undamaged merchandise
8 within thirty (30) days or if the person solicits such
9 sale on behalf of a membership club operating in
10 conformity with 16 Code of Federal Regulations 425,
11 c. a person ~~making telephone calls to~~ soliciting a
12 residential customer for the sole purpose of polling
13 or soliciting the expression of ideas, opinions or
14 votes, or a person soliciting solely for a political
15 or religious cause or purpose,
16 d. a paid solicitor or charitable organization which is
17 required to and which has complied with the notice and
18 reporting requirements of Section 552.3 of Title 18 of
19 the Oklahoma Statutes or a person who is excluded from
20 such notice and reporting requirements by Section
21 552.4 of Title 18 of the Oklahoma Statutes,
22 e. a supervised financial organization, as defined in
23 Section 1-301 of Title 14A of the Oklahoma Statutes,
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1 and its employees, when acting within the scope of
2 their employment,

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

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

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

21 i. any governmental entity or employee thereof, acting in
22 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
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1 the federal "Securities Exchange Act of 1934", 15
2 U.S.C. 781, and which is either registered or exempt
3 from registration under paragraph (A), (B), (C), (E),
4 (F), (G) or (H) of subsection (g) (2) of that section,
5 p. a person who has been operating for at least three (3)
6 years a retail business establishment in Oklahoma
7 under the same name as that used in connection with
8 the solicitation of sales by telephone if, on a
9 continuing basis, the majority of the seller's
10 business involves the purchaser receiving the seller's
11 goods and services at the seller's business location,
12 q. any telephone marketing service company which provides
13 telemarketing sales services under written contract to
14 sellers and has been operating continuously for at
15 least five (5) years under the same business name and
16 seventy-five percent (75%) or more of its services are
17 performed on behalf of sellers exempt from this
18 section. Nothing in this paragraph shall be construed
19 to exempt any commercial telephone seller that
20 contracts with a telephone marketing service company
21 for telemarketing sales service from the requirements
22 set forth in Section 775A.3 of this title,
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- 1 r. a person soliciting business solely from business
2 purchasers who have previously purchased identical or
3 similar goods or services from the business enterprise
4 on whose behalf the person is calling,
5 s. a person or an affiliate of a person whose business is
6 regulated by the Corporation Commission, or
7 t. a person soliciting the sale of any newspaper,
8 magazine, or other periodical of general circulation
9 if such sales constitute a majority of such person's
10 business and business revenues;

11 2. "Commercial telephone solicitation" means:

- 12 a. an unsolicited telephone ~~calls~~ call or message,
13 including, but not limited to, a cellular telephone
14 text message, to a person initiated by a commercial
15 telephone seller or salesperson, or an automated
16 dialing machine with or without a recorded message
17 device or electronic text message delivery device, for
18 the purpose of inducing the person to purchase or
19 invest in goods, services or property or offering an
20 extension of credit,
21 b. any other communication by a commercial telephone
22 seller in which:
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1 (1) a gift, award, prize or contest is offered and a
2 telephone call response from the intended
3 purchaser is invited,

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

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

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

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

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

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 Attorney
16 General shall establish, and thereafter maintain, a statewide
17 registry which shall contain a list of consumers who desire not to
18 receive unsolicited telemarketing sales calls or messages,
19 including, but not limited to, a cellular telephone text message.

20 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 775B.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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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- 1 a. stores telephone numbers to be called, or has a random
2 or sequential number generator capable of producing
3 numbers to be called,
4 b. conveys a prerecorded or synthesized voice message to
5 the number called, and
6 c. is used for the purpose of offering any goods or
7 services for sale or conveying information regarding
8 such goods or services;

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

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

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

20 16. "Deceptive use of another's name in notification or
21 solicitation" occurs when a business, or a person acting on its
22 behalf, engages in the following activity:
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- 1 a. through advertisement, solicitation or other
2 notification, either verbally or through any other
3 means, informs a consumer of the availability of any
4 type of goods or services that are not free,
- 5 b. the name of an unrelated and unaffiliated person is
6 mentioned in any manner,
- 7 c. the goods or services mentioned are not actually
8 provided by the unrelated and unaffiliated person
9 whose name is mentioned,
- 10 d. the business on whose behalf the notification or
11 solicitation is made does not have a consensual right
12 to mention the name of the unrelated and unaffiliated
13 person, and
- 14 e. neither the actual name nor trade name of the business
15 on whose behalf the notification or solicitation is
16 being made is stated, nor the actual name or trade
17 name of any actual provider of the goods or services
18 is stated, so as to clearly identify for the consumer
19 a name that is distinguishable and separate from the
20 name of the unrelated and unaffiliated person whose
21 name is mentioned in any manner in the notification or
22 solicitation, and thereby a misleading implication or
23 ambiguity is created, such that a consumer who is the

1 recipient of the advertisement, solicitation or
2 notification may reasonably but erroneously believe:

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

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

10 17. "Consumer laws" means the Oklahoma Consumer Protection Act
11 as well as the following: Section 1451 (Embezzlement), Section 1502
12 (Deceptive Advertising), Sections 1533.1 and 1533.2 (False
13 personation), Sections 1541.1 and 1541.2 (Obtaining or attempting to
14 obtain property by trick or deception), Section 1550.2 (Use of
15 credit and debit cards without consent), Sections 1550.21 through
16 1550.43 (Oklahoma Credit Card Crime Act of 1970) and Sections 1951
17 through 1981 (Computer Crimes Act) of Title 21 of the Oklahoma
18 Statutes.

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

22 Section 753. A person engages in a practice which is declared
23 to be unlawful under the Oklahoma Consumer Protection Act, Section

1 751 et seq. of this title, when, in the course of the person's
2 business, the person:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 13. Conducts a closing out sale without having first obtained a
21 license as required in this act, Section 751 et seq. of this title;
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1 14. Resumes the business for which the closing out sale was
2 conducted within one (1) year from the expiration date of the
3 closing out sale license;

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

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

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

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

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

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

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

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

24

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

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

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

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

15 27. Violates Section 752A of this title;

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

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

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

24

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

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

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

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

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12 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 04-12-2011 - DO
13 PASS, As Amended.

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