

1 **SENATE FLOOR VERSION**

2 April 7, 2022

3 **AS AMENDED**

4 ENGROSSED HOUSE

5 BILL NO. 3168

6 By: Phillips, McDugle, and Roe
7 of the House

8 and

9 Coleman and Leewright of
10 the Senate

11
12 **[telephone solicitation - Telephone Solicitation Act
13 of 2022 - prior express written consent -
14 codification - effective date]**

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

16 SECTION 1. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 775C.1 of Title 15, unless there
18 is created a duplication in numbering, reads as follows:

19 This act shall be known and may be cited as the "Telephone
20 Solicitation Act of 2022".

21 SECTION 2. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 775C.2 of Title 15, unless there
23 is created a duplication in numbering, reads as follows:

24 As used in the Telephone Solicitation Act of 2022:

1. "Called party" means a person who is the regular user of the
telephone number that receives a telephonic sales call;

1 2. "Caller identification service" means a service that allows
2 a telephone subscriber to have the telephone number and, where
3 available, the name of the calling party transmitted
4 contemporaneously with the telephone call and displayed on a device
5 in or connected to the subscriber's telephone;

6 3. "Prior express written consent" means a written agreement
7 that:

- 8 a. bears the signature of the called party,
- 9 b. clearly authorizes the person making or allowing the
10 placement of a telephonic sales call by telephone
11 call, text message, or voicemail transmission to
12 deliver or cause to be delivered to the called party a
13 telephonic sales call using an automated system for
14 the selection or dialing of telephone numbers, the
15 playing of a recorded message when a connection is
16 completed to a number called, or the transmission of a
17 prerecorded voicemail,
- 18 c. includes the telephone number to which the signatory
19 authorizes a telephonic sales call to be delivered,
20 and
- 21 d. includes a clear and conspicuous disclosure informing
22 the called party that:
 - 23 (1) by executing the agreement, the called party
24 authorizes the person making or allowing the

1 placement of a telephonic sales call to deliver
2 or cause to be delivered a telephonic sales call
3 to the called party using an automated system for
4 the selection or dialing of telephone numbers or
5 the playing of a recorded message when a
6 connection is completed to a number called, and

7 (2) he or she is not required to sign the written
8 agreement directly or indirectly or to agree to
9 enter into such an agreement as a condition of
10 purchasing any property, goods, or services; and

11 4. "Signature" includes an electronic or digital signature, to
12 the extent that such form of signature is recognized as a valid
13 signature under applicable federal law or state contract law.

14 SECTION 3. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 775C.3 of Title 15, unless there
16 is created a duplication in numbering, reads as follows:

17 A. A person may not make or knowingly allow a telephonic sales
18 call to be made if such call involves an automated system for the
19 selection or dialing of telephone numbers or the playing of a
20 recorded message when a connection is completed to a number called
21 without the prior express written consent of the called party.

22 B. It shall be unlawful for any person who makes a telephonic
23 sales call or causes a telephonic sales call to be made to fail to
24 transmit or cause not to be transmitted the originating telephone

1 number and, when made available by the telephone solicitor's
2 carrier, the name of the telephone solicitor to any caller
3 identification service in use by a recipient of a telephonic sales
4 call. However, it is not a violation to substitute, for the name
5 and telephone number used in or billed for making the call, the name
6 of the seller on behalf of which a telephonic sales call is placed
7 and the seller's customer service telephone number, which is
8 answered during regular business hours. If a telephone number is
9 made available through a caller identification service as a result
10 of a telephonic sales call, the solicitor must ensure that telephone
11 number is capable of receiving telephone calls and must connect the
12 original call recipient, upon calling such number, to the telephone
13 solicitor or to the seller on behalf of which a telephonic sales
14 call was placed.

15 C. It shall be unlawful for any person who makes a telephonic
16 sales call or causes a telephonic sales call to be made to
17 intentionally alter the voice of the caller in an attempt to
18 disguise or conceal the identity of the caller in order to defraud,
19 confuse, or financially or otherwise injure the recipient of a
20 telephonic sales call or in order to obtain personal information
21 from the recipient of a telephonic sales call, which may be used in
22 a fraudulent or unlawful manner.

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1 D. There is a rebuttable presumption that a telephonic sales
2 call made to any area code in this state is made to an Oklahoma
3 resident or to a person in this state at the time of the call.

4 SECTION 4. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 775C.4 of Title 15, unless there
6 is created a duplication in numbering, reads as follows:

7 A. A commercial telephone seller or salesperson may not make
8 any of the following types of phone calls, including calls made
9 through automated dialing or recorded messages:

10 1. A commercial telephone solicitation phone call before 8 a.m.
11 or after 8 p.m. local time in the called person's time zone; and

12 2. More than three commercial telephone solicitation phone
13 calls from any number to a person over a twenty-four-hour period on
14 the same subject matter or issue, regardless of the phone number
15 used to make the call.

16 B. A commercial telephone seller or salesperson making a
17 commercial telephone solicitation call may not:

18 1. Intentionally act to prevent transmission of the telephone
19 solicitor's name or telephone number to the party called when the
20 equipment or service used by the telephone solicitor is capable of
21 creating and transmitting the telephone solicitor's name or
22 telephone number; or

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1 2. Use technology that deliberately displays a different caller
2 identification number than the number from where the call is
3 originating to conceal the true identity of the caller.

4 SECTION 5. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 775C.5 of Title 15, unless there
6 is created a duplication in numbering, reads as follows:

7 Exempt from this act are the following:

8 1. A person engaging in commercial telephone solicitation where
9 the solicitation is an isolated transaction and not conducted in the
10 course of a pattern of repeated transactions of like nature;

11 2. A person soliciting for religious, charitable, political, or
12 educational purposes. A person soliciting for other noncommercial
13 purposes is exempt only if that person is soliciting for a nonprofit
14 organization and if that organization is properly registered as such
15 with the Secretary of State and is included within the exemption of
16 Section 501(c) (3) or (6) of the Internal Revenue Code;

17 3. A person who does not make the major sales presentation
18 during the telephone solicitation and who does not intend to, and
19 does not actually, complete or obtain provisional acceptance of a
20 sale during the telephone solicitation, but who makes the major
21 sales presentation and completes the sale at a later face-to-face
22 meeting between the seller and the prospective purchaser. However,
23 if a seller, directly following a telephone solicitation, causes an
24 individual whose primary purpose is to go to the prospective

1 purchaser to collect the payment or deliver any item purchased, this
2 exemption does not apply;

3 4. A licensed securities, commodities, or investment broker,
4 dealer, or investment adviser when soliciting within the scope of
5 his or her license, or a licensed associated person of a securities,
6 commodities, or investment broker, dealer, or investment adviser
7 when soliciting within the scope of his or her license. As used in
8 this section, "licensed securities, commodities, or investment
9 broker, dealer, or investment adviser" means a person subject to
10 license or registration by the Securities and Exchange Commission,
11 by the Financial Industry Regulatory Authority or other self-
12 regulatory organization as defined by the Securities Exchange Act of
13 1934, 15 U.S.C., Section 781, or by an official or agency of this
14 state or of any state of the United States. As used in this
15 section, "licensed associated person of a securities, commodities,
16 or investment broker, dealer, or investment adviser" means an
17 associated person registered or licensed by the Financial Industry
18 Regulatory Authority or other self-regulatory organization as
19 defined by the Securities Exchange Act of 1934, 15 U.S.C., Section
20 781, or by an official or agency of this state or of any state of
21 the United States;

22 5. A person primarily soliciting the sale of a newspaper of
23 general circulation;

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1 6. A book, video, or record club or contractual plan or
2 arrangement:

- 3 a. under which the seller provides the consumer with a
4 form which the consumer may use to instruct the seller
5 not to ship the offered merchandise,
- 6 b. which is regulated by the Trade Regulation Rule
7 regarding the Use of Negative Option Plans by Sellers
8 in Commerce, and
- 9 c. which provides for the sale of books, records, or
10 videos which are not covered under subparagraph a or b
11 of this paragraph, including continuity plans,
12 subscription arrangements, standing-order
13 arrangements, supplements, and series arrangements
14 under which the seller periodically ships merchandise
15 to a consumer who has consented in advance to receive
16 such merchandise on a periodic basis;

17 7. A supervised financial institution or parent, subsidiary, or
18 affiliate thereof operating within the scope of supervised activity.
19 As used in this section, "supervised financial institution" means a
20 commercial bank, trust company, savings and loan association, mutual
21 savings bank, credit union, industrial loan company, consumer
22 finance lender, commercial finance lender, or insurer; provided that
23 the institution is subject to supervision by an official or agency
24 of this state, of any state, or of the United States. For the

1 purposes of this exemption, "affiliate" means a person who directly,
2 or indirectly through one or more intermediaries, controls or is
3 controlled by, or is under common control with, a supervised
4 financial institution;

5 8. Any licensed insurance broker, agent, customer
6 representative, or solicitor when soliciting within the scope of his
7 or her license. As used in this section, "licensed insurance
8 broker, agent, customer representative, or solicitor" means any
9 insurance broker, agent, customer representative, or solicitor
10 licensed by an official or agency of this state or of any state of
11 the United States;

12 9. A person soliciting the sale of services provided by a cable
13 television system operating under authority of a franchise or
14 permit;

15 10. A business-to-business sale where:

16 a. the commercial telephone seller has been lawfully
17 operating continuously for at least three (3) years
18 under the same business name and has at least fifty
19 percent (50%) of its dollar volume consisting of
20 repeat sales to existing businesses,

21 b. the purchaser business intends to resell or offer for
22 purposes of advertisement or as a promotional item the
23 property or goods purchased, or
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1 c. the purchaser business intends to use the property or
2 goods purchased in a recycling, reuse,
3 remanufacturing, or manufacturing process;

4 11. A person who solicits sales by periodically publishing and
5 delivering a catalog of the seller's merchandise to prospective
6 purchasers, if the catalog:

7 a. contains a written description or illustration of each
8 item offered for sale,

9 b. includes the business address or home office address
10 of the seller,

11 c. includes at least twenty (20) pages of written
12 material and illustrations and is distributed in more
13 than one state, or

14 d. has an annual circulation by mailing of not less than
15 one hundred fifty thousand (150,000);

16 12. A person who solicits contracts for the maintenance or
17 repair of goods previously purchased from the person making the
18 solicitation or on whose behalf the solicitation is made;

19 13. A commercial telephone seller;

20 14. A telephone company subject to Title 17 of the Oklahoma
21 Statutes, or affiliate thereof or its agents, or a
22 telecommunications business that is regulated by the Oklahoma
23 Corporation Commission, or a cellular telephone company licensed by
24 the Federal Communications Commission or any of their authorized

1 vendors or independent contractors or other bona fide radio
2 telecommunication services provider. For the purposes of this
3 exemption, "affiliate" means a person who directly, or indirectly
4 through one or more intermediaries, controls or is controlled by, or
5 is under common control with, a telephone company subject to Title
6 17 of the Oklahoma Statutes;

7 15. A person who is licensed pursuant to the Funeral Services
8 Licensing Act in Title 59 of the Oklahoma Statutes and who is
9 soliciting within the scope of the license;

10 16. An issuer or a subsidiary of an issuer that has a class of
11 securities which is subject to Section 12 of the Securities Exchange
12 Act of 1934, 15 U.S.C., Section 781, and which is either registered
13 or exempt from registration under subparagraph (a), subparagraph
14 (b), subparagraph (c), subparagraph (e), subparagraph (f),
15 subparagraph (g), or subparagraph (h) of subsection (G) of paragraph
16 (2) of that section;

17 17. A business soliciting exclusively the sale of telephone
18 answering services; provided that the telephone answering services
19 will be supplied by the solicitor;

20 18. A person soliciting a transaction regulated by the
21 Commodity Futures Trading Commission if the person is registered or
22 temporarily licensed for this activity with the Commodity Futures
23 Trading Commission under the Commodity Exchange Act, 7 U.S.C.,
24

1 Section 1 et seq., and the registration or license has not expired
2 or been suspended or revoked;

3 19. A person soliciting the sale of food, food product, food
4 ingredient, dietary ingredient, dietary supplement, or beverage for
5 human consumption, if the solicitation neither intends to result in,
6 or actually results in, a sale which costs the purchaser in excess
7 of Five Hundred Dollars (\$500.00);

8 20. A person soliciting business from prospective consumers who
9 have an existing business relationship with or who have previously
10 purchased from the business enterprise for which the solicitor is
11 calling if the solicitor is operating under the same business
12 enterprise;

13 21. A person who has been operating, for at least one (1) year,
14 a retail business establishment under the same name as that used in
15 connection with telemarketing and both of the following occur on a
16 continuing basis:

- 17 a. either products are displayed and offered for sale or
18 services are offered for sale and provided at the
19 business establishment, and
20 b. a majority of the seller's business involves the buyer
21 obtaining such products or services at the seller's
22 location;

23 22. Any person who has been lawfully providing telemarketing
24 sales services continuously for at least five (5) years under the

1 same ownership and control and who derives seventy-five percent
2 (75%) of its gross telemarketing sales revenues from contracts with
3 persons exempted in this section;

4 23. A person licensed pursuant to The Oklahoma Real Estate
5 License Code in Title 59 of the Oklahoma Statutes, soliciting within
6 the scope of the license;

7 24. A publisher, or an agent of a publisher by written
8 agreement, who solicits the sale of his or her periodical or
9 magazine of general, paid circulation. The term "paid circulation"
10 shall not include magazines that are only circulated as part of a
11 membership package or that are given as a free gift or prize from
12 the publisher or agent of the publisher by written agreement;

13 25. A person who is licensed or certified to handle pesticides
14 under Section 3-82 of Title 2 of the Oklahoma Statutes; and

15 26. A licensee, or an affiliate of a licensee, regulated under
16 Title 6 of the Oklahoma Statutes.

17 SECTION 6. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 775C.6 of Title 15, unless there
19 is created a duplication in numbering, reads as follows:

20 A. A called party who is aggrieved by a violation of this act
21 may bring an action to:

22 1. Enjoin such violation; and

23 2. Recover actual damages or Five Hundred Dollars (\$500.00),
24 whichever is greater.

1 B. If the court finds that the defendant willfully or knowingly
2 violated this act or rules adopted pursuant to this act, the court
3 may, in its discretion, increase the amount of the award to an
4 amount equal to not more than three times the amount available under
5 subsection A of this section.

6 SECTION 7. This act shall become effective November 1, 2022.

7 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS, COMMERCE AND TOURISM
8 April 7, 2022 - DO PASS AS AMENDED
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