

1 STATE OF OKLAHOMA

2 2nd Session of the 58th Legislature (2022)

3 HOUSE BILL 3168

By: Phillips

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5
6 AS INTRODUCED

7 An Act relating to telephone solicitation; creating
8 the Telephone Solicitation Act of 2022; defining
9 terms; prohibiting certain telephonic sales calls
10 without the prior express written consent of the
11 called party; prohibiting commercial telephone
12 sellers or salespersons from using certain technology
13 to conceal their true identity; providing a
14 rebuttable presumption for certain calls made to any
15 area code in this state; prohibiting a commercial
16 telephone seller or salesperson from using automated
17 dialing or recorded messages to make certain
18 commercial telephone solicitation phone calls;
19 providing the timeframe during which a commercial
20 telephone seller or salesperson may make commercial
21 solicitation phone calls; prohibiting commercial
22 telephone sellers or salespersons from making a
23 specified number of commercial telephone solicitation
24 phone calls to a person over a specified timeframe;
exempting certain persons; providing a cause of
action for aggrieved called parties; authorizing a
court to increase an award for willful and knowing
violations; providing for codification; and providing
an effective date.

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

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

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

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

6 As used in the Telephone Solicitation Act of 2022:

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

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

14 3. "Prior express written consent" means a written agreement
15 that:

- 16 a. bears the signature of the called party,
- 17 b. clearly authorizes the person making or allowing the
18 placement of a telephonic sales call by telephone
19 call, text message, or voicemail transmission to
20 deliver or cause to be delivered to the called party a
21 telephonic sales call using an automated system for
22 the selection or dialing of telephone numbers, the
23 playing of a recorded message when a connection is
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1 completed to a number called, or the transmission of a
2 prerecorded voicemail,

3 c. includes the telephone number to which the signatory
4 authorizes a telephonic sales call to be delivered,
5 and

6 d. includes a clear and conspicuous disclosure informing
7 the called party that:

- 8 (1) by executing the agreement, the called party
9 authorizes the person making or allowing the
10 placement of a telephonic sales call to deliver
11 or cause to be delivered a telephonic sales call
12 to the called party using an automated system for
13 the selection or dialing of telephone numbers or
14 the playing of a recorded message when a
15 connection is completed to a number called, and
16 (2) he or she is not required to sign the written
17 agreement directly or indirectly or to agree to
18 enter into such an agreement as a condition of
19 purchasing any property, goods, or services; and

20 4. "Signature" includes an electronic or digital signature, to
21 the extent that such form of signature is recognized as a valid
22 signature under applicable federal law or state contract law.
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1 SECTION 3. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 775C.3 of Title 15, unless there
3 is created a duplication in numbering, reads as follows:

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

9 B. It shall be unlawful for any person who makes a telephonic
10 sales call or causes a telephonic sales call to be made to fail to
11 transmit or cause not to be transmitted the originating telephone
12 number and, when made available by the telephone solicitor's
13 carrier, the name of the telephone solicitor to any caller
14 identification service in use by a recipient of a telephonic sales
15 call. However, it is not a violation to substitute, for the name
16 and telephone number used in or billed for making the call, the name
17 of the seller on behalf of which a telephonic sales call is placed
18 and the seller's customer service telephone number, which is
19 answered during regular business hours. If a telephone number is
20 made available through a caller identification service as a result
21 of a telephonic sales call, the solicitor must ensure that telephone
22 number is capable of receiving telephone calls and must connect the
23 original call recipient, upon calling such number, to the telephone
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1 solicitor or to the seller on behalf of which a telephonic sales
2 call was placed.

3 C. It shall be unlawful for any person who makes a telephonic
4 sales call or causes a telephonic sales call to be made to
5 intentionally alter the voice of the caller in an attempt to
6 disguise or conceal the identity of the caller in order to defraud,
7 confuse, or financially or otherwise injure the recipient of a
8 telephonic sales call or in order to obtain personal information
9 from the recipient of a telephonic sales call, which may be used in
10 a fraudulent or unlawful manner.

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

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

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

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

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

3 B. A commercial telephone seller or salesperson making a
4 commercial telephone solicitation call may not:

5 1. Intentionally act to prevent transmission of the telephone
6 solicitor's name or telephone number to the party called when the
7 equipment or service used by the telephone solicitor is capable of
8 creating and transmitting the telephone solicitor's name or
9 telephone number; or

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

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

16 Exempt from this act are the following:

17 1. A person engaging in commercial telephone solicitation where
18 the solicitation is an isolated transaction and not done in the
19 course of a pattern of repeated transactions of like nature;

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

3 3. A person who does not make the major sales presentation
4 during the telephone solicitation and who does not intend to, and
5 does not actually, complete or obtain provisional acceptance of a
6 sale during the telephone solicitation, but who makes the major
7 sales presentation and completes the sale at a later face-to-face
8 meeting between the seller and the prospective purchaser. However,
9 if a seller, directly following a telephone solicitation, causes an
10 individual whose primary purpose is to go to the prospective
11 purchaser to collect the payment or deliver any item purchased, this
12 exemption does not apply;

13 4. A licensed securities, commodities, or investment broker,
14 dealer, or investment adviser when soliciting within the scope of
15 his or her license, or a licensed associated person of a securities,
16 commodities, or investment broker, dealer, or investment adviser
17 when soliciting within the scope of his or her license. As used in
18 this section, "licensed securities, commodities, or investment
19 broker, dealer, or investment adviser" means a person subject to
20 license or registration by the Securities and Exchange Commission,
21 by the Financial Industry Regulatory Authority or other self-
22 regulatory organization as defined by the Securities Exchange Act of
23 1934, 15 U.S.C., Section 781, or by an official or agency of this
24 state or of any state of the United States. As used in this

1 section, "licensed associated person of a securities, commodities,
2 or investment broker, dealer, or investment adviser" means an
3 associated person registered or licensed by the Financial Industry
4 Regulatory Authority or other self-regulatory organization as
5 defined by the Securities Exchange Act of 1934, 15 U.S.C., Section
6 781, or by an official or agency of this state or of any state of
7 the United States;

8 5. A person primarily soliciting the sale of a newspaper of
9 general circulation;

10 6. A book, video, or record club or contractual plan or
11 arrangement:

- 12 a. under which the seller provides the consumer with a
13 form which the consumer may use to instruct the seller
14 not to ship the offered merchandise,
- 15 b. which is regulated by the Trade Regulation Rule
16 regarding the Use of Negative Option Plans by Sellers
17 in Commerce, and
- 18 c. which provides for the sale of books, records, or
19 videos which are not covered under subparagraph a or b
20 of this paragraph, including continuity plans,
21 subscription arrangements, standing order
22 arrangements, supplements, and series arrangements
23 under which the seller periodically ships merchandise

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1 to a consumer who has consented in advance to receive
2 such merchandise on a periodic basis;

3 7. A supervised financial institution or parent, subsidiary, or
4 affiliate thereof operating within the scope of supervised activity.
5 As used in this section, "supervised financial institution" means a
6 commercial bank, trust company, savings and loan association, mutual
7 savings bank, credit union, industrial loan company, consumer
8 finance lender, commercial finance lender, or insurer; provided that
9 the institution is subject to supervision by an official or agency
10 of this state, of any state, or of the United States. For the
11 purposes of this exemption, "affiliate" means a person who directly,
12 or indirectly through one or more intermediaries, controls or is
13 controlled by, or is under common control with, a supervised
14 financial institution;

15 8. Any licensed insurance broker, agent, customer
16 representative, or solicitor when soliciting within the scope of his
17 or her license. As used in this section, "licensed insurance
18 broker, agent, customer representative, or solicitor" means any
19 insurance broker, agent, customer representative, or solicitor
20 licensed by an official or agency of this state or of any state of
21 the United States;

22 9. A person soliciting the sale of services provided by a cable
23 television system operating under authority of a franchise or
24 permit;

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

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

7 b. the purchaser business intends to resell or offer for
8 purposes of advertisement or as a promotional item the
9 property or goods purchased, or

10 c. the purchaser business intends to use the property or
11 goods purchased in a recycling, reuse,
12 remanufacturing, or manufacturing process;

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

16 a. contains a written description or illustration of each
17 item offered for sale,

18 b. includes the business address or home office address
19 of the seller,

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

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

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

4 13. A commercial telephone seller;

5 14. A telephone company subject to Title 17 of the Oklahoma
6 Statutes, or affiliate thereof or its agents, or a
7 telecommunications business that is regulated by the Oklahoma
8 Corporation Commission, or a cellular telephone company licensed by
9 the Federal Communications Commission or other bona fide radio
10 telecommunication services provider. For the purposes of this
11 exemption, "affiliate" means a person who directly, or indirectly
12 through one or more intermediaries, controls or is controlled by, or
13 is under common control with, a telephone company subject to Title
14 17 of the Oklahoma Statutes;

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

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

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

4 18. A person soliciting a transaction regulated by the
5 Commodity Futures Trading Commission if the person is registered or
6 temporarily licensed for this activity with the Commodity Futures
7 Trading Commission under the Commodity Exchange Act, 7 U.S.C.,
8 Section 1 et seq., and the registration or license has not expired
9 or been suspended or revoked;

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

15 20. A person soliciting business from prospective consumers who
16 have an existing business relationship with or who have previously
17 purchased from the business enterprise for which the solicitor is
18 calling if the solicitor is operating under the same exact business
19 name;

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

1 a. either products are displayed and offered for sale or
2 services are offered for sale and provided at the
3 business establishment, and

4 b. a majority of the seller's business involves the buyer
5 obtaining such products or services at the seller's
6 location;

7 22. Any person who has been lawfully providing telemarketing
8 sales services continuously for at least five (5) years under the
9 same ownership and control and who derives seventy-five percent
10 (75%) of its gross telemarketing sales revenues from contracts with
11 persons exempted in this section;

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

15 24. A publisher, or an agent of a publisher by written
16 agreement, who solicits the sale of his or her periodical or
17 magazine of general, paid circulation. The term "paid circulation"
18 shall not include magazines that are only circulated as part of a
19 membership package or that are given as a free gift or prize from
20 the publisher or agent of the publisher by written agreement;

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

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

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

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

- 6 1. Enjoin such violation; and
- 7 2. Recover actual damages or Five Hundred Dollars (\$500.00),
8 whichever is greater.

9 B. If the court finds that the defendant willfully or knowingly
10 violated this act or rules adopted pursuant to this act, the court
11 may, in its discretion, increase the amount of the award to an
12 amount equal to not more than three times the amount available under
13 subsection A of this section.

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

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