

An Act

ENROLLED HOUSE
BILL NO. 3168

By: Phillips, McDugle, Roe, and
West (Josh) of the House

and

Coleman, Leewright,
Bullard, and Stephens of
the Senate

An Act relating to telephone solicitation; creating the Telephone Solicitation Act of 2022; defining terms; prohibiting certain telephonic sales calls without the prior express written consent of the called party; prohibiting commercial telephone sellers or salespersons from using certain technology to conceal their true identity; providing a rebuttable presumption for certain calls made to any area code in this state; prohibiting a commercial telephone seller or salesperson from using automated dialing or recorded messages to make certain commercial telephone solicitation phone calls; providing the time frame during which a commercial telephone seller or salesperson may make commercial solicitation phone calls; prohibiting commercial telephone sellers or salespersons from making a specified number of commercial telephone solicitation phone calls to a person over a specified time frame; 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.

SUBJECT: Telephone solicitation

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:

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

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

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 commercial telephonic sales call;

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

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

- a. bears the signature of the called party,
- b. clearly authorizes the person making or allowing the placement of a commercial telephonic sales call by telephone call, text message, or voicemail transmission to deliver or cause to be delivered to the called party a commercial telephonic sales call using an automated system for the selection or dialing of telephone numbers, the playing of a recorded message when a connection is completed to a number called, or the transmission of a prerecorded voicemail,
- c. includes the telephone number to which the signatory authorizes a commercial telephonic sales call to be delivered, and
- d. includes a clear and conspicuous disclosure informing the called party that:

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

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

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

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

B. It shall be unlawful for any person who makes a commercial telephonic sales call or causes a commercial telephonic sales call to be made to fail to transmit or cause not to be transmitted the originating telephone number and, when made available by the telephone solicitor's carrier, the name of the telephone solicitor to any caller identification service in use by a recipient of a commercial telephonic sales call. However, it is not a violation to substitute, for the name and telephone number used in or billed for making the call, the name of the seller on behalf of which a commercial telephonic sales call is placed and the seller's customer service telephone number, which is answered during regular business hours. If a telephone number is made available through a caller identification service as a result of a commercial telephonic sales call, the solicitor must ensure that telephone number is capable of

receiving telephone calls and must connect the original call recipient, upon calling such number, to the telephone solicitor or to the seller on behalf of which a commercial telephonic sales call was placed.

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

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

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

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

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

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

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

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

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

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

Exempt from this act are the following:

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

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

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

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

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

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

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

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

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

8. Any licensed insurance broker, agent, customer representative, or solicitor when soliciting within the scope of his

or her license. As used in this section, "licensed insurance broker, agent, customer representative, or solicitor" means any insurance broker, agent, customer representative, or solicitor licensed by an official or agency of this state or of any state of the United States;

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

10. A business-to-business sale where:

- a. the commercial telephone seller has been lawfully operating continuously for at least three (3) years under the same business name and has at least fifty percent (50%) of its dollar volume consisting of repeat sales to existing businesses,
- b. the purchaser business intends to resell or offer for purposes of advertisement or as a promotional item the property or goods purchased, or
- c. the purchaser business intends to use the property or goods purchased in a recycling, reuse, remanufacturing, or manufacturing process;

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

- a. contains a written description or illustration of each item offered for sale,
- b. includes the business address or home office address of the seller,
- c. includes at least twenty (20) pages of written material and illustrations and is distributed in more than one state, or
- d. has an annual circulation by mailing of not less than one hundred fifty thousand (150,000);

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

13. A commercial telephone seller;

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

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

16. An issuer or a subsidiary of an issuer that has a class of securities which is subject to Section 12 of the Securities Exchange Act of 1934, 15 U.S.C., Section 78l, and which is either registered or exempt from registration under subparagraph (a), subparagraph (b), subparagraph (c), subparagraph (e), subparagraph (f), subparagraph (g), or subparagraph (h) of subsection (G) of paragraph (2) of that section;

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

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

19. A person soliciting the sale of food, food product, food ingredient, dietary ingredient, dietary supplement, or beverage for human consumption, if the solicitation neither intends to result in,

or actually results in, a sale which costs the purchaser in excess of Five Hundred Dollars (\$500.00);

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

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

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

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

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

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

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

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

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

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

1. Enjoin such violation; and

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

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

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

Passed the House of Representatives the 12th day of May, 2022.

Presiding Officer of the House
of Representatives

Passed the Senate the 26th day of April, 2022.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____