



February 25, 2022

VIA UNITED STATES MAIL

Rep. Logan Phillips, Chair
Rep. Danny Williams, Vice Chair
Rep. Scott Fetgatter
Rep. David Smith
Rep. Daniel Pae
Rep. Andy Fugate
House Technology Committee

Oklahoma State Capitol
2300 N. Lincoln Blvd.
Oklahoma City, OK 73105

RE: Comments on Proposed Bill H. 3168, Telephone Solicitation Act of 2022

Dear Technology Committee Leadership:

The Professional Association for Customer Engagement (“PACE”) is a non-profit trade association exclusively dedicated to advancing and improving business-to-business and business-to-consumer engagement. Members agree to comport their conduct to PACE’s standards, which seek to establish fair and honest dealing in the realm of consumer engagement. PACE’s main goal is to ensure that the customer is treated with courtesy, dignity, and respect. Members of PACE include Fortune 500 companies, contact centers, BPOs, economic development organizations, and technology suppliers that enable companies to contact or enhance their communication with their customers. We provide our members with a platform of best practices, documentable procedures, and measurable compliance tools.

PACE is committed to consumer protection. PACE consistently advocates for and promotes best practices, emerging technology, and thought leadership in order to ensure exceptional customer service, business growth, and development for both companies and consumers. We generally support do-not-call lists, consent for telemarketing communications, and other measures that make it easier for consumers to receive the communications that they desire. In implementing those measures, however, legislators and regulators must always balance the need to give consumers choice with creating frameworks that prove unworkable because they are too cumbersome or create a poor consumer experience. PACE writes today to express its concerns regarding proposed House Bill 3168 (“Bill”), which obfuscates its purpose, contradicts good business sense, and ultimately harms the consumer.

Broadly, the Bill creates a commercial solicitations law by placing limitations on the communications and modes thereof which persons may engage to facilitate the sale of goods or services.¹

The proposed legislation prohibits a person from making certain telephonic calls, without the called party's prior express written consent, when using an "*automated system for the selection or dialing of telephone numbers.*" Further, the Bill establishes an element of prior express written consent which requires clear and conspicuous disclosure that, by executing the consent agreement, the consumer authorizes the caller to make the call using an "automated system for the selection or dialing of telephone numbers." An aggrieved person who receives a telephonic call from a business without prior express written consent and using an "automated system for the selection or dialing of telephone numbers" is entitled to civil action to recover actual damages or \$500, whichever is greater.

The prohibition against use of an "automated system for the selection" is problematic. The Bill does not define the phrase, nor does it define the word "selection." This amorphous language creates a hazardous ambiguity. The strict language of this Bill would prohibit businesses from automatically selecting numbers from indexed customer lists, thereby reaching much further than the federal Telephone Consumer Protection Act ("TCPA").²

The TCPA prevents certain calls made, without consent, using as automatic telephone dialing system, defined to only include devices that use a random or sequential telephone number generator to either store or produce a telephone number.³ The TCPA's prohibitions apply to a device that dials a telephone number that was stored or produced from a list where the numbers were generated i) randomly and/or ii) sequentially; it does not prohibit a device that automatically selects numbers from an indexed consumer list. The TCPA mindfully balances preventing robocalls with ensuring businesses may lawfully call consumers who desire to be called. This Bill should aim to align with the TCPA instead of impeding business-consumer relationships and potentially making businesses that call from Oklahoma or to Oklahoma consumers state law violators.

The purpose of the Bill is to prevent certain types of robocalls. But the Bill's inclusion of the phrase "automated system for the selection" would muddle such purpose. The practical result would prevent consumers from receiving desired calls and would complicate the business's use of an indexed list to call those consumers, rendering the Bill both anti-consumer and anti-business.

Sound business acumen is crucial to the free flow of commerce, particularly in product and services sales. A special relationship exists between consumers and sales coordinators that requires strong and uncomplicated communication. By adding "automated system for the selection or dialing of telephone numbers" to the law, the Legislature undermines this relationship, hinders the ability of

¹ H.B. 3168, 58th Leg., Sec. Sess. (Ok. 2022).

² 47 U.S.C. § 227 *et. seq.*

³ *Facebook, Inc. v. Duguid*, 141 S. Ct. 1163 at *1167 (U.S. Sup. Ct. April 1, 2021) ("To qualify as an automatic telephone dialing system under the Telephone Consumer Protection Act, a device must have the capacity either to store a telephone number using a random or sequential number generator, or to produce a telephone number using a random or sequential number generator.")

professionals to make sales, and prevents consumers from the communications they desire, and thus prevents them from getting the goods and services they need.

The potential harm this Bill will cause businesses is frightening. Not only will businesses lose the ease and convenience of calling customers from their carefully crafted indexed list, but they will also face uncertainty about how to remain in contact with their customers. Businesses take considerable time and care to index lists of consumer's numbers to be called to maximize productivity and to make the consumer contact economical. These methods would be thrown out because of this Bill. If compliance fees do not overwhelm businesses, potential litigation costs will. No position could be conservative enough to avoid litigation regarding the meaning of the phrase "automated system for the selection." Even if the Bill passes and courts find automatically selecting numbers from an indexed list is not prohibited, businesses will carry a heavy expense to litigate to that end.

PACE recognizes and applauds the Oklahoma Legislature's desire to reduce the number of illegal telephone calls consumers receive; however, House Bill 3168 burdens legitimate business communications with customers to the customer's detriment. PACE recommends that the Legislature consider two potential ways to mitigate harm the bill would cause. First, define "automated system for the selection or dialing of telephone number" to include automatically selecting random or sequential numbers, but to exclude automatically selecting numbers from an indexed customer list, similar to the TCPA. Second, remove the "automated system for the selection or dialing of telephone number" language and replace it with the TCPA's automatic telephone dialing system definition: a device which has the capacity either to store a telephone number using a random or sequential number generator, or to produce a telephone number using a random or sequential number generator. Either change would serve the purpose of preventing robocalls and would allow businesses to continue calls to consumers using an indexed call list.

PACE appreciates the opportunity to comment on this piece of legislation, and should you have any questions or comments, please contact the undersigned.

Respectfully submitted,



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