

ENGROSSED SENATE AMENDMENT
TO
ENGROSSED HOUSE BILL NO. 1287

BY: COX, COMBS, MONKS,
PAULK, TYLER, ADAIR,
BOYD, FALLIN, GLOVER,
HAGER, ISAAC, KOUBA,
LITTLEFIELD, ROBERTS
(Walt), ROSS, SADLER,
SATTERFIELD and TAYLOR
of the HOUSE

and

HORNER of the SENATE

AN ACT RELATING TO CRIMES AND PUNISHMENTS; CREATING
THE CONSUMERS DISCLOSURE OF PRIZES AND GIFTS ACT;
PROVIDING SHORT TITLE; PROVIDING DEFINITIONS;
PROVIDING CERTAIN PROHIBITIONS CONCERNING PRIZES
AND GIFTS; PROVIDING EXCEPTIONS THERETO; PROVIDING
FINES AND PENALTIES; PROVIDING FOR INJUNCTIVE
RELIEF; PROVIDING FOR CODIFICATION; AND PROVIDING
AN EFFECTIVE DATE.

AMENDMENT NO. 1. Strike the title, enacting clause and entire bill
and insert

"AN ACT RELATING TO CRIMES AND PUNISHMENTS AND CONTRACTS;
CREATING THE CONSUMERS DISCLOSURE OF PRIZES AND GIFTS ACT;
PROVIDING SHORT TITLE; PROVIDING DEFINITIONS; PROVIDING
CERTAIN PROHIBITIONS CONCERNING PRIZES AND GIFTS; PROVIDING
EXCEPTIONS THERETO; AMENDING 15 O.S. 1981, SECTION 753, AS
LAST AMENDED BY SECTION 2, CHAPTER 353, O.S.L. 1989 (15
O.S. SUPP. 1990, SECTION 753), WHICH RELATES TO THE
OKLAHOMA CONSUMER PROTECTION ACT; MODIFYING STATUTORY
REFERENCE; EXPANDING UNLAWFUL PRACTICES; 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 996.1 of Title 21, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Consumers Disclosure of Prizes and Gifts Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 996.2 of Title 21, unless there is created a duplication in numbering, reads as follows:

As used in the Consumers Disclosure of Prizes and Gifts Act:

1. "Marketing channel" means a method of retail distribution, including but not limited to, catalog sales, mail order, telephone sales, and in-person sales at retail outlets; and

2. "Retail merchant" means any person or entity regardless of the form of organization that has continuously offered for sale or lease more than one hundred different types of goods or services to the public in the State of Oklahoma throughout a period exceeding three (3) years.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 996.3 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. It is unlawful for any person to use the term "prize" or "gift" or other similar term in any manner that would be untrue or misleading.

B. It is unlawful to notify any person by any means, as a part of an advertising plan or program, that the person has won a prize and that as a condition of receiving such prize the person must pay any money or rent any goods or services.

C. It is unlawful to notify any person by any means that the person will receive a gift and that as a condition of receiving the gift the person must pay any money, or purchase, lease or rent any goods or services, if any one or more of the following exists:

1. The shipping charge, depending on the method of shipping used, exceeds:

- a. the average cost of postage or the average charge of a delivery service in the business of delivering goods of like size, weight, and kind for shippers other than the offeror of the gift for the geographic area in which the gift is being distributed, or
- b. the exact amount for shipping paid to an independent supplier, who is in the business of shipping goods for shippers other than the offeror of the gift.

2. The handling charge:

- a. is not reasonable, or
- b. exceeds the actual cost of handling, or
- c. exceeds the greater of Three Dollars (\$3.00) in any transaction or eighty percent (80%) of the actual cost of the gift item to the offeror or its agent, or
- d. in the case of a merchandise retailer, exceeds the actual amount for handling paid to an independent supplier, who is in the business of handling goods for businesses other than the offeror of the gift.

3. Any goods or services which must be purchased or leased by the offeree of the gift in order to obtain the gift could have been purchased through the same marketing channel in which the gift was offered for a lower price without the gift items at or proximate to the time the gift was offered.

4. The majority of the gift offeror's sales or leases within the preceding year, through the marketing channel in which the gift is offered or through in-person sales at retail outlets, of the type of goods or services which must be purchased or leased in order to obtain the gift item was made in conjunction with the offer of a gift. This paragraph does not apply to a gift offer made by a

retail merchant in conjunction with the sale or lease through mail order of goods or services if:

- a. the goods or services are of a type unlike any other type of goods or services sold or leased by the retail merchant at any time during the period beginning six (6) months before and continuing six (6) months after the gift offer,
- b. the gift offer does not extend for a period more than two (2) months, and
- c. the gift offer is not untrue or misleading in any manner.

5. The gift offeror represents that the offeree has been specially selected in any manner unless:

- a. the representation is true, and
- b. the offeree made a purchase from the gift offeror within a six-month period before the gift offer was made or has a credit card issued by, or a retail installment account with, the gift offeror.

D. Each violation of the provisions of this section shall be an unlawful practice pursuant to the provisions of the Oklahoma Consumer Protection Act, Section 751 et seq. of Title 15 of the Oklahoma Statutes.

SECTION 4. AMENDATORY 15 O.S. 1981, Section 753, as last amended by Section 2, Chapter 353, O.S.L. 1989 (15 O.S. Supp. 1990, Section 753), is amended to read as follows:

Section 753. A. A person engages in a practice which is declared to be unlawful under the Oklahoma Consumer Protection Act, Section 751 et seq. of this title, when, in the course of his business, he:

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

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

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

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

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

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

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

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

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

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

11. Makes false or misleading statements of fact, knowingly or with reason to know, concerning the price of the subject of a

consumer transaction or the reason for, existence of, or amounts of price reduction;

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

- a. refusal to show the subject of a consumer transaction advertised;
- b. disparagement of the advertised subject of a consumer transaction or the terms of sale;
- c. requiring undisclosed tie-in sales or other undisclosed conditions to be met prior to selling the advertised subject of a consumer transaction;
- d. refusal to take orders for the subject of a consumer transaction advertised for delivery within a reasonable time;
- e. showing or demonstrating defective subject of a consumer transaction which the seller knows is unusable or impracticable for the purpose set forth in the advertisement;
- f. accepting a deposit for the subject of a consumer transaction and subsequently charging the buyer for a higher priced item; or
- g. willful failure to make deliveries of the subject of a consumer transaction within a reasonable time or to make a refund therefor upon the request of the purchaser;

13. Conducts a closing out sale without having first obtained a license as required in this act, Section 751 et seq. of this title;

14. Resumes the business for which the closing out sale was conducted within one (1) year from the expiration date of the closing out sale license;

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

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

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

18. Violates any provision of the Consumer Disclosure of Prizes and Gifts Act, Section 1 et seq. of this act.

SECTION 5. This act shall become effective September 1, 1991."

Passed the Senate the 1st day of April, 1991.

President of the Senate

Passed the House of Representatives the ____ day of

_____, 1991.

Speaker of the House of Representatives