

SHORT TITLE: An Act relating to trade and consumer protection; creating Oklahoma Deceptive Trade Practices and Consumer Protection Act; declaring false, misleading or deceptive acts or practices in conduct of trade unlawful; providing remedies and penalties; codification; effective date.

STATE OF OKLAHOMA

1st Session of the 45th Legislature (1995)

SENATE BILL NO. 635

By: Stipe

AS INTRODUCED

An Act relating to trade and consumer protection; creating Oklahoma Deceptive Trade Practices and Consumer Protection Act; providing short title; defining terms; declaring false, misleading or deceptive acts or practices in conduct of trade unlawful and defining term; providing exemptions; authorizing attorney general and district attorneys to bring certain actions; making certain notice optional and requiring certain prior contact except under certain conditions; allowing certain action after cessation of unlawful conduct; stating venue; providing civil penalty; providing for additional orders or judgments including damages, appointment of receiver or sequestration of assets; providing civil penalty for violations of injunction; stating duties of district attorneys and attorney general; stating causes for which a consumer may maintain an action; stating remedies; awarding certain fees and costs to prevailing party and for frivolous suits; providing for notice and offer of settlement; stating defenses for award of damages; allowing suit against third party where defense is asserted and for dissemination of certain advertisement or promotional material; providing certain indemnity for person against whom action is brought; stating venue for consumer action; providing statute of limitation; authorizing court clerk to issue subpoenas to certain persons; providing for filing of assurance of voluntary compliance; providing for appointment of receiver if judgment is not satisfied; prohibiting waiver of certain provisions with certain exception; making remedies cumulative; providing for construction and application of act; 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 750.1 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 "Oklahoma Deceptive Trade Practices and Consumer Protection Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 750.2 of Title 15, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "Business consumer" means an individual, partnership, limited liability company or corporation who seeks or acquires by purchase or lease, any goods or services for commercial or business use. The term does not include this state or a political subdivision or agency of this state;

2. "Consumer" means an individual, partnership, corporation, limited liability company, this state or a political subdivision or agency of this state who seeks or acquires by purchase or lease any goods or services, except that the term does not include a business consumer that has assets of Twenty-five Million Dollars (\$25,000,000.00) or more, or that is owned or controlled by a corporation or entity with assets of Twenty-five Million Dollars (\$25,000,000.00) or more;

3. "Documentary material" includes the original or copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription or other tangible document or recording, wherever situated;

4. "Goods" means tangible chattels or real property purchased or leased for use;

5. "Knowingly" means actual awareness of the falsity, deception or unfairness of the act or practice giving rise to the consumer's claim or, in an action brought under paragraph 2 of subsection A of Section 7 of this act, actual awareness of the act or practice constituting the breach of warranty, but actual awareness may be inferred where objective manifestations indicate that a person acted with actual awareness;

6. "Person" means an individual, partnership, corporation, limited liability company, association or other group, however organized;

7. "Services" means work, labor or service purchased or leased for use, including services furnished in connection with the sale or repair of goods;

8. "Trade" and "commerce" mean the advertising, offering for sale, sale, lease or distribution of any good or service, of any property, tangible or intangible, real, personal or mixed, and any other article, commodity or thing of value, wherever situated, and shall include any trade or commerce directly or indirectly affecting the people of this state; and

9. "Unconscionable action or course of action" means an act or practice which, to a person's detriment:

- a. takes advantage of the lack of knowledge, ability, experience or capacity of a person to a grossly unfair degree, or
- b. results in a gross disparity between the value received and consideration paid, in a transaction involving transfer of consideration.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 750.3 of Title 15, unless there is created a duplication in numbering, reads as follows:

A. False, misleading or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful and are subject to action by any district attorney or the Attorney General of this state.

B. The term "false, misleading or deceptive acts or practices" as used in this act includes, but is not limited to, the following acts:

1. Passing off goods or services as those of another;

2. Causing confusion or misunderstanding as to the source, sponsorship, approval or certification of goods or services;

3. Causing confusion or misunderstanding as to affiliation, connection, or association with, or certification by, another;

4. Using deceptive representations or designations of geographic origin in connection with goods or services;

5. Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation or connection which the person does not have;

6. Representing that goods are original or new if they are deteriorated, reconditioned, reclaimed, used or secondhand;

7. Representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another;

8. Disparaging the goods, services or business of another by false or misleading representations of facts;

9. Advertising goods or services with intent not to sell them as advertised;

10. Advertising goods or services with intent not to supply a reasonable expectable public demand, unless the advertisements disclosed a limitation of quantity;

11. Making false or misleading statements of fact concerning the reasons for, existence of, or amount of price reductions;

12. Representing that an agreement confers or involves rights, remedies or obligations which it does not have or involve, or which are prohibited by law;

13. Knowingly making false or misleading statements of fact concerning the need for parts, replacement or repair service;

14. Misrepresenting the authority of a salesperson, representative or agent to negotiate the final terms of a consumer transaction;

15. Basing a charge for the repair of any item in whole or in part on a guaranty or warranty instead of on the value of the actual repairs made or work to be performed on the item without stating separately the charges for the work and the charge for the warranty or guaranty, if any;

16. Disconnecting, turning back or resetting the odometer of any motor vehicle so as to reduce the number of miles indicated on the odometer gauge;

17. Advertising of any sale by fraudulently representing that a person is going out of business;

18. Using or employing a chain referral sales plan in connection with the sale or offer to sell of goods, merchandise or anything of value, which uses the sales technique, plan, arrangement or agreement in which the buyer or prospective buyer is offered the opportunity to purchase merchandise or goods and in connection with the purchase receives the seller's promise or representation that the buyer shall have the right to receive compensation or consideration in any form for furnishing to the seller the names of other prospective buyers if receipt of the compensation is contingent upon the occurrence of an event subsequent to the time the buyer purchases the merchandise or goods;

19. Representing that a guarantee or warranty confers or involves rights or remedies which it does not have;

20. Selling or offering to sell, either directly or associated with the sale of goods or services, a right of participation in a multi-level distributorship. As used herein, "multi-level distributorship" means a sales plan for the distribution of goods or services in which promises of rebate or payment are made to individuals, conditioned upon those individuals recommending or securing additional individuals to assume positions in the sales operation, and where the rebate or payment is not exclusively

conditioned on or in the relation to proceeds from the retail sales of goods;

21. Representing that work or services have been performed on, or parts replaced in, goods when the work or services were not performed or the parts replaced;

22. Filing suit, founded upon a written contractual obligation, signed by the defendant to pay money arising out of or based on a consumer transaction for goods, services, loans or extensions of credit intended primarily for personal, family, household or agricultural use, in any county other than in the county in which the defendant resides at the time of the commencement of the action or in the county in which the defendant in fact signed the contract; provided, however, a violation of this paragraph shall not occur where it is shown that the person filing such suit neither knew nor had reason to know that the county in which such suit was filed was neither the county in which the defendant resides at the commencement of the suit nor the county in which the defendant in fact signed the contract;

23. Failing to disclose information concerning goods or services which was known at the time of the transaction if such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed; or

24. Using the term "corporation" or "incorporated", or an abbreviation of either of those terms, in the name of a business entity that is not incorporated under the laws of this state or another jurisdiction.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 750.4 of Title 15, unless there is created a duplication in numbering, reads as follows:

A. Nothing in this act shall apply to the owner or employees of a regularly published newspaper, magazine or telephone directory, or

of a broadcast station or billboard, wherein any advertisement in violation of this act is published or disseminated, unless it is established that the owner or employees of the advertising medium have knowledge of the false, deceptive or misleading acts or practices declared to be unlawful by this act, or had a direct or substantial financial interest in the sale or distribution of the unlawfully advertised good or service. Financial interest as used in this section relates to an expectation which would be the direct result of such advertisement.

B. 1. Nothing in this act shall apply to acts or practices authorized under specific rules or regulations promulgated by the Federal Trade Commission under Section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C.A. 45(a)(1)).

2. The provisions of this act do apply to any act or practice prohibited or not specifically authorized by a rule or regulation of the Federal Trade Commission. An act or practice is not specifically authorized if no rule or regulation has been issued on the act or practice.

C. Nothing in this act shall apply to actions or appeals pending on the date that this act becomes effective.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 750.5 of Title 15, unless there is created a duplication in numbering, reads as follows:

A. 1. Whenever the Attorney General or a district attorney of this state has reason to believe that any person is engaged in, has engaged in, or is about to engage in any act or practice declared to be unlawful by this act, and that proceedings would be in the public interest, the Attorney General or district attorney may bring an action in the name of the state against the person to restrain by temporary restraining order, temporary injunction or permanent injunction the use of such method, act or practice. The Attorney General or a district attorney may bring any action under this

section against a licensed insurer or insurance agent for a violation of this act.

2. Nothing herein shall require the Attorney General or a district attorney to notify such person that court action is or may be under consideration. Provided, however, the Attorney General or district attorney shall, at least seven (7) days prior to instituting such court action, contact such person to inform the person in general of the alleged unlawful conduct. Cessation of unlawful conduct after such prior contact shall not render the court action moot under any circumstances, and injunctive relief shall lie even if the person has ceased the unlawful conduct after such prior contact. Such prior contact shall not be required if, in the opinion of the Attorney General or district attorney, there is good cause to believe that the person would evade service of process if prior contact were made or that the person could destroy relevant records if prior contact were made.

B. An action brought under subsection A of this section which alleges a claim to relief under this section may be commenced in:

1. The district court of the county in which the person against whom it is brought resides, has a principal place of business or has done business;

2. The district court of the county where the transaction occurred; or

3. On the consent of the parties, a district court of Oklahoma County.

The court may issue temporary restraining orders, or temporary or permanent injunctions to restrain and prevent violations of this act, and such injunctive relief shall be issued without bond.

C. In addition to the request for a temporary restraining order, or permanent injunction in a proceeding brought under subsection A of this section, the Attorney General or district attorney may request a civil penalty of not more than Two Thousand

Dollars (\$2,000.00) per violation, not to exceed a total of Ten Thousand Dollars (\$10,000.00) to be paid to the state.

D. The court may make such additional orders or judgments as are necessary to compensate identifiable persons for actual damages or to restore money or property, real or personal, which may have been acquired by means of any unlawful act or practice. Damages may not include any damages incurred beyond a point of two (2) years prior to the institution of the action by the Attorney General or district attorney. Orders of the court may also include the appointment of a receiver or a sequestration of assets if a person who has been ordered by a court to make restitution under this section has failed to do so within three (3) months after the order to make restitution has become final and nonappealable.

E. Any person who violates the terms of an injunction under this section shall forfeit and pay to the state a civil penalty of not more than Ten Thousand Dollars (\$10,000.00) per violation, not to exceed Fifty Thousand Dollars (\$50,000.00). In determining whether or not an injunction has been violated, the court shall take into consideration the maintenance of procedures reasonably adapted to ensure compliance with the injunction. For the purposes of this section, the district court issuing the injunction shall retain jurisdiction, and the cause shall be continued, and in these cases, the Attorney General or district attorney, acting in the name of the state, may petition for recovery of civil penalties under this section.

F. An order of the court awarding civil penalties under subsection E of this section applies only to violations of the injunction incurred prior to the awarding of the penalty order. Second or subsequent violations of an injunction issued under this section are subject to the same penalties set out in subsection E of this section.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 750.6 of Title 15, unless there is created a duplication in numbering, reads as follows:

A. It is the duty of district attorneys to lend to the Attorney General any assistance requested in the commencement and prosecutions of action under this act.

B. A district attorney, without prior written notice to the Attorney General, may institute and prosecute actions seeking injunctive relief under this act, after complying with the prior contact provisions of subsection A of Section 5 of this act. On request, the Attorney General shall assist the district attorney in any action taken under this act. If an action is prosecuted by a district attorney alone, the district attorney shall make a full report to the Attorney General, including the final disposition of the matter.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 750.7 of Title 15, unless there is created a duplication in numbering, reads as follows:

A. A consumer may maintain an action where any of the following constitute a producing cause of actual damages:

1. The use or employment by any person of a false, misleading or deceptive act or practice that is specifically enumerated in subsection B of Section 3 of this act;

2. Breach of an express or implied warranty;

3. Any unconscionable action or course of action by any person;

or

4. The use or employment by any person of an act or practice in violation of the Oklahoma Insurance Code, as amended, or rules issued by the Insurance Commissioner.

B. In a suit filed under this section, each consumer who prevails may obtain:

1. The amount of actual damages found by the trier of fact. In addition the court shall award two (2) times that portion of the actual damages that does not exceed One Thousand Dollars (\$1,000.00). If the trier of fact finds that the conduct of the defendant was committed knowingly, the trier of fact may award not more than three (3) times the amount of actual damages in excess of One Thousand Dollars (\$1,000.00);

2. An order enjoining such acts of failure to act;

3. Orders necessary to restore to any party to the suit any money or property, real or personal, which may have been acquired in violation of this act; and

4. Any other relief which the court deems proper, including the appointment of a receiver or the revocation of a license or certificate authorizing a person to engage in business in this state if the judgment has not been satisfied within three (3) months of the date of the final judgment. The court may revoke or suspend a license to do business in this state or appoint a receiver to take over the affairs of a person who has failed to satisfy a judgment if the person is a licensee of, or regulated by, a state agency which has statutory authority to revoke or suspend a license or to appoint a receiver or trustee. Costs and fees of such receivership or other relief shall be assessed against the defendant.

C. On a finding by the court that an action under this section was groundless and brought in bad faith or brought for the purpose of harassment, the court shall award to the defendant reasonable and necessary attorneys' fees and court costs.

D. Each consumer who prevails shall be awarded court costs and reasonable and necessary attorneys' fees.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 750.8 of Title 15, unless there is created a duplication in numbering, reads as follows:

A. As a prerequisite to filing a suit seeking damages under paragraph 1 of subsection B of Section 7 of this act against any person, a consumer shall give written notice to the person at least thirty (30) days before filing the suit advising the person of:

1. The consumer's specific complaint; and
2. The amount of actual damages and expenses, including attorneys' fees, if any, reasonably incurred by the consumer in asserting the claim against the defendant.

B. If the giving of thirty (30) days' written notice is rendered impracticable by reason of the necessity of filing suit in order to prevent the expiration of the statute of limitations or if the consumer's claim is asserted by way of counterclaim, the notice provided for in subsection A of this section is not required, but the tender provided for by subsection C of this section and by subsection D of Section 9 of this act may be made within thirty (30) days after the filing of the suit or counterclaim.

C. Any person who receives the written notice provided by subsection A of this section may, within thirty (30) days after the receipt of the notice, tender to the consumer a written offer of settlement, including an agreement to reimburse the consumer for the attorneys' fees, if any, reasonably incurred by the consumer in asserting the claim up to the date of the written notice. A person who does not receive such a written notice due to the consumer's suit or counterclaim being filed as provided for by subsection B of this section may, within thirty (30) days after the filing of such suit or counterclaim, tender to the consumer a written offer of settlement, including an agreement to reimburse the consumer for the attorneys' fees, if any, reasonably incurred by the consumer in asserting the claim up to the date the suit or counterclaim was filed. Any offer of settlement not accepted within thirty (30) days of receipt by the consumer shall be deemed to have been rejected by the consumer.

D. A settlement offer made in compliance with subsection C of this section, if rejected by the consumer, may be filed with the court together with an affidavit certifying its rejection. If the court finds that the amount tendered in the settlement offer is the same or substantially the same as the actual damages found by the trier of fact, the consumer may not recover an amount in excess of the amount tendered in the settlement offer or the amount of actual damages found by the trier of fact, whichever is less.

E. The tender of an offer of settlement is not an admission of engaging in an unlawful act or practice or of liability under this act. Evidence of a settlement offer may be introduced only to determine the reasonableness of the settlement offer as provided for by subsection D of this section.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 750.9 of Title 15, unless there is created a duplication in numbering, reads as follows:

A. In an action brought under Section 7 of this act, it is a defense to the award of any damages or attorneys' fees if the defendant proves that, before the consummation of the transaction, the defendant gave reasonable and timely written notice to the plaintiff of the defendant's reliance on:

1. Written information relating to the particular goods or services in question obtained from official government records if the written information was false or inaccurate and the defendant did not know and could not reasonably have known of the falsity or inaccuracy of the information;

2. Written information relating to the particular goods or services in question obtained from another source if the information was false or inaccurate and the defendant did not know and could not reasonably have known of the falsity or inaccuracy of the information; or

3. Written information concerning a test required or prescribed by a government agency if the information from the test was false or inaccurate and the defendant did not know and could not reasonably have known of the falsity or inaccuracy of the information.

B. In asserting a defense under subsection A of this section, the defendant shall prove the written information was a producing cause of the alleged damage. A finding of one producing cause does not bar recovery of other conduct of the defendant not the subject of a defensive finding under subsection A of this section.

C. In a suit where a defense is asserted under paragraph 2 of subsection A of this section, suit may be asserted against the third party supplying the written information without regard to privity where the third party knew or should have reasonably foreseen that the information would be provided to a consumer; provided, no double recovery may result.

D. In an action brought under Section 7 of this act, it is a defense to a cause of action if the defendant proves that the defendant received notice from the consumer advising the defendant of the nature of the consumer's specific complaint and of the amount of actual damages and expenses, including attorneys' fees, if any, reasonably incurred by the consumer in asserting the claim against the defendant, and that within thirty (30) days after the day on which the defendant received the notice the defendant tendered to the consumer:

1. The amount of actual damages claimed; and

2. The expenses, including attorneys' fees, if any, reasonably incurred by the consumer in asserting the claim against the defendant.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 750.10 of Title 15, unless there is created a duplication in numbering, reads as follows:

If damages or civil penalties are assessed against the seller of goods or services for advertisement or promotional material in a suit filed under this act, the seller of goods or services has a cause of action against a third party for the amount of damages or civil penalties assessed against the seller plus attorneys' fees on a showing that:

1. The seller received the advertisements or promotional material from the third party;

2. The seller's only action with regard to the advertisements or promotional material was to disseminate the material; and

3. The seller has ceased disseminating the material.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 750.11 of Title 15, unless there is created a duplication in numbering, reads as follows:

A person against whom an action has been brought under this act may seek contribution or indemnity from one who, under the statute law or at common law, may have liability for the damaging event of which the consumer complains. A person seeking indemnity as provided by this section may recover all sums that the person is required to pay as a result of the action, attorney's fees reasonably in relation to the amount of work performed in maintaining the action for indemnity, and costs.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 750.12 of Title 15, unless there is created a duplication in numbering, reads as follows:

An action brought which alleges a claim to relief under Section 7 of this act may be commenced in the county in which:

1. The person against whom the suit is brought resides, has a principal place of business, or has a fixed and established place of business at the time the suit is brought;

2. The alleged act or practice occurred; or

3. The defendant or an authorized agent of the defendant solicited the transaction made the subject of the action at bar.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 750.13 of Title 15, unless there is created a duplication in numbering, reads as follows:

All actions brought under this act must be commenced within two (2) years after the date on which the false, misleading or deceptive act or practice occurred or within two (2) years after the consumer discovered or in the exercise of reasonable diligence should have discovered the occurrence of the false, misleading or deceptive act or practice. The period of limitation provided in this section may be extended for a period of one (1) year if the plaintiff proves that failure to timely commence the action was caused by the defendant's knowingly engaging in conduct solely calculated to induce the plaintiff to refrain from or postpone the commencement of this action.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 750.14 of Title 15, unless there is created a duplication in numbering, reads as follows:

The clerk of the district court at the request of any party to a suit pending in such court which is brought under this act shall issue a subpoena for any witness or witnesses who may be represented to reside within one hundred (100) miles of the courthouse of the county in which the suit is pending or who may be found within such distance at the time of trial. The clerk shall issue a separate subpoena and a copy thereof for each witness subpoenaed. When an action is pending in Oklahoma County, on the consent of the parties, a subpoena may be issued for any witness or witnesses who may be represented to reside within one hundred (100) miles of the courthouse of a county in which the suit could otherwise have been brought or who may be found within such distance at the time of the trial.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 750.15 of Title 15, unless there is created a duplication in numbering, reads as follows:

A. In the administration of this act, the Attorney General or district attorney may accept assurance of voluntary compliance with respect to any act or practice which violates this act from any person who is engaging in, has engaged in, or is about to engage in the act or practice. The assurance shall be in writing and shall be filed with and subject to the approval of the district court in the county in which the alleged violator resides or does business or in the district court of Oklahoma County.

B. The acceptance of an assurance of voluntary compliance may be conditioned on the stipulation that the person in violation of this act restore to any person in interest any money or property, real or personal, which may have been acquired by means of acts or practices which violate this act.

C. An assurance of voluntary compliance shall not be considered an admission of prior violation of this act. However, unless an assurance has been rescinded by agreement of the parties or voided by a court for good cause, subsequent failure to comply with the terms of an assurance is prima facie evidence of a violation of this act.

D. Matters closed by the filing of an assurance of voluntary compliance may be reopened at any time. Assurances of voluntary compliance shall in no way affect individual rights of action under this act, except that the rights of individuals with regard to money or property received pursuant to a stipulation in the voluntary compliance under subsection B of this section are governed by the terms of the voluntary compliance.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 750.16 of Title 15, unless there is created a duplication in numbering, reads as follows:

A. If a money judgment entered under this act is unsatisfied thirty (30) days after it becomes final and if the prevailing party has made a good faith attempt to obtain satisfaction of the judgment, the following presumptions exist with respect to the party against whom the judgment was entered:

1. The defendant is insolvent or in danger of becoming insolvent;
2. The defendant's property is in danger of being lost, removed or otherwise exempted from collection on the judgment;
3. The prevailing party will be materially injured unless a receiver is appointed over the defendant's business; and
4. There is no adequate remedy other than receivership available to the prevailing party.

B. Subject to the provisions of subsection A of this section, a prevailing party may move that the defendant show cause why a receiver should not be appointed. Upon adequate notice and hearing, the court shall appoint a receiver over the defendant's business unless the defendant proves that all of the presumptions set forth in subsection A of this section are not applicable.

C. The order appointing a receiver must clearly state whether the receiver will have general power to manage and operate the defendant's business or have power to manage only a defendant's finances. The order shall limit the duration of the receivership to such time as the judgment or judgments awarded under this act are paid in full. When there are judgments against a defendant which have been awarded to more than one plaintiff, the court shall have discretion to take any action necessary to efficiently operate a receivership in order to accomplish the purpose of collecting the judgments.

SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 750.17 of Title 15, unless there is created a duplication in numbering, reads as follows:

Any waiver by a consumer of the provisions of this act is contrary to public policy and is unenforceable and void; provided, however, that a business consumer with assets of Five Million Dollars (\$5,000,000.00) or more, according to the most recent financial statement of the business consumer prepared in accordance with generally accepted accounting principles, which has knowledge and experience in financial and business matters that enable it to evaluate the merits and risks of a transaction and which is not in a significantly disparate bargaining position may by written contract waive the provisions of this act, other than Section 11 of this act.

SECTION 18. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 750.18 of Title 15, unless there is created a duplication in numbering, reads as follows:

The provisions of this act are not exclusive. The remedies provided in this act are in addition to any other procedures or remedies provided for in any other law; provided, however, that no recovery shall be permitted under both this act and another law of both actual damages and penalties for the same act or practice. A violation of a provision of law other than this act is not in and of itself a violation of this act. An act or practice that is a violation of a provision of law other than this act may be made the basis of an action under this act if the act or practice is proscribed by a provision of this act or is declared by such other law to be actionable under this act. The provisions of this act do not in any way preclude political subdivisions of this state from dealing with deceptive trade practice.

SECTION 19. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 750.19 of Title 15, unless there is created a duplication in numbering, reads as follows:

This act shall be liberally construed and applied to promote its underlying purposes, which are to protect consumers against false, misleading and deceptive business practices, unconscionable actions,

and breaches of warranty and to provide efficient and economical procedures to secure such protection.

SECTION 20. This act shall become effective September 1, 1995.

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