

STATE OF OKLAHOMA

1st Session of the 47th Legislature (1999)

CONFERENCE COMMITTEE SUBSTITUTE  
FOR ENGROSSED  
HOUSE BILL NO. 1187

By: Vaughn, Adkins, Roggow,  
Winchester, Piatt, Nance  
and Bengé of the House

and

Coffee of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to contracts; amending 15 O.S. 1991, Section 233, which relates to the rescinding of contracts; adding to the list of cases where a party may rescind a contract; amending 15 O.S. 1991, Section 752, as last amended by Section 2, Chapter 8, O.S.L. 1996 (15 O.S. Supp. 1998, Section 752), which relates to definitions in the Oklahoma Consumer Protection Act; modifying "consumer transaction"; amending 15 O.S. 1991, Section 753, as last amended by Section 3, Chapter 8, O.S.L. 1996 (15 O.S. Supp. 1998, Section 753), which relates to unlawful acts under the Oklahoma Consumer Protection Act; adding to list of unlawful acts; modifying reference; and providing an effective date.

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

SECTION 1. AMENDATORY 15 O.S. 1991, Section 233, is amended to read as follows:

Section 233. A party to a contract may rescind the same in the following cases only:

1. If the consent of the party rescinding, or of any party jointly contracting with him, was given by mistake, or obtained through duress, menace, fraud, or undue influence, exercised by or with the connivance of the party as to whom he rescinds, or of any other party to the contract jointly interested with such party.

1 2. If through the fault of the party as to whom he rescinds,  
2 the consideration for his obligation fails in whole or in part.

3 3. If such consideration becomes entirely void from any cause.

4 4. If such consideration, before it is rendered to him,  
5 fails in a material respect, from any cause; ~~or~~

6 5. By consent of all of the other parties; or

7 6. If the party against whom rescission is sought violates the  
8 Oklahoma Consumer Protection Act, Section 751 et seq. of this title.

9 SECTION 2. AMENDATORY 15 O.S. 1991, Section 752, as last  
10 amended by Section 2, Chapter 8, O.S.L. 1996 (15 O.S. Supp. 1998,  
11 Section 752), is amended to read as follows:

12 Section 752. As used in the Oklahoma Consumer Protection Act:

13 1. "Person" means a natural person, corporation, trust,  
14 partnership, incorporated or unincorporated association, or any  
15 other legal entity;

16 2. "Consumer transaction" means the advertising, offering for  
17 sale or purchase, sale, purchase, or distribution of any services or  
18 any property, tangible or intangible, real, personal, or mixed, or  
19 any other article, commodity, or thing of value wherever located,  
20 for purposes that are personal, household, or business oriented;

21 3. "Documentary material" means the original or a copy of any  
22 book, record, report, memorandum, paper, communication, tabulation,  
23 map, chart, photograph, mechanical transcription, or other tangible  
24 document or recording, wherever located;

25 4. "Examination" when used in reference to documentary material  
26 includes the inspection, study, or copying of any such material, and  
27 the taking of testimony under oath, or acknowledgment in respect to  
28 any such documentary material or copy thereof;

29 5. "Merchandise" includes any object, ware, good, commodity,  
30 intangible, real estate, or service;

31 6. "Closing out sale" means any offer to sell, or actual sale,  
32 to the public of goods, wares, or merchandise on the implied or

1 direct representation that the sale is in anticipation of the  
2 termination of a business at its present location, or that the sale  
3 is being held other than in the ordinary course of business. It  
4 also shall mean but shall not be limited to any sale held or  
5 advertised as a "closing out sale", "going out of business sale",  
6 "discontinuance of business sale", "quitting business sale", "sell  
7 out", "liquidation", "loss of lease sale", "must vacate sale",  
8 "forced out of business sale", "fire sale", "smoke and water damage  
9 sale", "adjustment sale", "creditor's sale", "bankrupt sale",  
10 "insolvent sale", "mortgage sale", or other like or similar title;

11 7. "Advertisement" means any advertisement or announcement  
12 published in the news media including but not limited to the radio,  
13 television, newspapers, handbills, and mailers;

14 8. "License" means the written authorization issued by the  
15 court clerk of the district court in any county in this state to any  
16 person to conduct a closing out sale;

17 9. "Clerk" means the court clerk of the district court of any  
18 county of this state in which a person applying for a license  
19 intends to conduct a closing out sale;

20 10. "Automatic dial announcing device" means automatic  
21 equipment that:

22 a. stores telephone numbers to be called, or has a random  
23 or sequential number generator capable of producing  
24 numbers to be called,

25 b. conveys a prerecorded or synthesized voice message to  
26 the number called, and

27 c. is used for the purpose of offering any goods or  
28 services for sale or conveying information regarding  
29 such goods or services;

30 11. "Deceptive trade practice" means a misrepresentation,  
31 omission or other practice that has deceived or could reasonably be  
32 expected to deceive or mislead a person to the detriment of that

1 person. Such a practice may occur before, during or after a  
2 consumer transaction is entered into and may be written or oral;

3 12. "Unfair trade practice" means any practice which offends  
4 established public policy or if the practice is immoral, unethical,  
5 oppressive, unscrupulous or substantially injurious to consumers;  
6 and

7 13. "Cemetery" means any land or structure in this state  
8 dedicated to or used, or intended to be used, for the interment of  
9 human remains.

10 SECTION 3. AMENDATORY 15 O.S. 1991, Section 753, as last  
11 amended by Section 3, Chapter 8, O.S.L. 1996 (15 O.S. Supp. 1998,  
12 Section 753), is amended to read as follows:

13 Section 753. A person engages in a practice which is declared  
14 to be unlawful under the Oklahoma Consumer Protection Act, Section  
15 751 et seq. of this title, when, in the course of the person's  
16 business, the person:

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

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

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

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

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

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

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

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

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

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

18 11. Makes false or misleading statements of fact, knowingly or  
19 with reason to know, concerning the price of the subject of a  
20 consumer transaction or the reason for, existence of, or amounts of  
21 price reduction;

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

26 a. refusal to show the subject of a consumer transaction  
27 advertised,

28 b. disparagement of the advertised subject of a consumer  
29 transaction or the terms of sale,

30 c. requiring undisclosed tie-in sales or other  
31 undisclosed conditions to be met prior to selling the  
32 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;

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

18. Violates any provision of the Consumer Disclosure of Prizes and Gifts Act, Section 996.1 et seq. of Title 21 of the Oklahoma Statutes;

19. Violates any provision of Section 755.1 of this title or Section 1847a of Title 21 of the Oklahoma Statutes;

20. Commits an unfair or deceptive trade practice as defined in Section 752 of this title; ~~or~~

1 21. Violates any provision of Section ~~±~~ 169.1 of ~~this act~~ Title  
2 8 of the Oklahoma Statutes in fraudulently or intentionally failing  
3 or refusing to honor the contract to provide certain cemetery  
4 services specified in the contract entered into pursuant to the  
5 Perpetual Care Fund Act;

6 22. Misrepresents a mail solicitation as an invoice or as a  
7 billing statement; or

8 23. Offers to purchase a mineral or royalty interest through an  
9 offer that resembles an oil and gas lease and that the consumer  
10 believed was an oil and gas lease.

11 SECTION 4. This act shall become effective November 1, 1999.

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