

STATE OF OKLAHOMA

2nd Session of the 47th Legislature (2000)

HOUSE BILL HB2095

By: Braddock

AS INTRODUCED

An Act relating to consumer protection; amending 15 O.S. 1991, Sections 756.1, as amended by Section 3, Chapter 235, O.S.L. 1994 and 761.1, as last amended by Section 61, Chapter 5, 1st Extraordinary Session, O.S.L. 1999 (15 O.S. Supp. 1999, Sections 756.1 and 761.1), which relate to the Oklahoma Consumer Protection Act; modifying actions in which certain remedies are available; and providing an effective date.

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

SECTION 1. AMENDATORY 15 O.S. 1991, Section 756.1, as amended by Section 3, Chapter 235, O.S.L. 1994 (15 O.S. Supp. 1999, Section 756.1), is amended to read as follows:

Section 756.1 A. The Attorney General or a district attorney may bring an action:

1. To obtain a declaratory judgment that an act or practice violates the Consumer Protection Act;
2. To enjoin, or to obtain a restraining order against a person who has violated, is violating, or is likely to violate the Consumer Protection Act;
3. To recover actual damages and, in the case of unconscionable conduct, penalties as provided by this act, on behalf of an aggrieved consumer, ~~in an individual action only,~~ for violation of the Consumer Protection Act; or
4. To recover reasonable expenses and investigation fees.

B. In lieu of instigating or continuing an action or proceeding, the Attorney General or a district attorney may accept a

consent judgment with respect to any act or practice declared to be a violation of the Consumer Protection Act. Such a consent judgment shall provide for the discontinuance by the person entering the same of any act or practice declared to be a violation of the Consumer Protection Act, and it may include a stipulation for the payment by such person of reasonable expenses and investigation fees incurred by the Attorney General or a district attorney. The consent judgment also may include a stipulation for restitution to be made by such person to consumers of money, property or other things received from such consumers in connection with a violation of this act and also may include a stipulation for specific performance. Any consent judgment entered into pursuant to this section shall not be deemed to admit the violation, unless it does so by its terms. Before any consent judgment entered into pursuant to this section shall be effective, it must be approved by the district court and an entry made thereof in the manner required for making an entry of judgment. Once such approval is received, any breach of the conditions of such consent judgment shall be treated as a violation of a court order, and shall be subject to all the penalties provided by law therefor.

C. In any action brought by the Attorney General or a district attorney, the court may:

1. Make such orders or judgments as may be necessary to prevent the use or employment by a person of any practice declared to be a violation of the Consumer Protection Act;

2. Make such orders or judgments as may be necessary to compensate any person for damages sustained;

3. Make such orders or judgments as may be necessary to carry out a transaction in accordance with consumers' reasonable expectations;

4. Appoint a master or receiver or order sequestration of assets to prevent the use or enjoyment of proceeds derived through

illegal means and assess the expenses of a master or receiver against the defendant;

5. Revoke any license or certificate authorizing that person to engage in business in this state;

6. Enjoin any person from engaging in business in this state;
or

7. Grant other appropriate relief.

D. When an action is filed under the Consumer Protection Act by a district attorney or the Attorney General, no action seeking an injunction or declaratory judgment shall be filed in any other county or district in this state based upon the same transaction or occurrence, series of transactions or occurrences, or allegations which form the basis of the first action filed.

SECTION 2. AMENDATORY 15 O.S. 1991, Section 761.1, as last amended by Section 61, Chapter 5, 1st Extraordinary Session, O.S.L. 1999 (15 O.S. Supp. 1999, Section 761.1), is amended to read as follows:

Section 761.1 A. The commission of any act or practice declared to be a violation of the Consumer Protection Act shall render the violator liable to the aggrieved consumer for the payment of actual damages sustained by the customer and costs of litigation including reasonable attorney's fees, and the aggrieved consumer shall have a private right of action for damages, including but not limited to, costs and attorney's fees. In any private action for damages for a violation of the Consumer Protection Act the court shall, subsequent to adjudication on the merits and upon motion of the prevailing party, determine whether a claim or defense asserted in the action by a nonprevailing party was asserted in bad faith, was not well grounded in fact, or was unwarranted by existing law or a good faith argument for the extension, modification, or reversal of existing law. Upon so finding, the court shall enter a judgment ordering such nonprevailing party to reimburse the prevailing party

an amount not to exceed Ten Thousand Dollars (\$10,000.00) for reasonable costs, including attorney's fees, incurred with respect to such claim or defense.

B. The commission of any act or practice declared to be a violation of the Consumer Protection Act, if such act or practice is also found to be unconscionable, shall render the violator liable to the aggrieved customer for the payment of a civil penalty, ~~recoverable in an individual action only,~~ in a sum set by the court of not more than Two Thousand Dollars (\$2,000.00) for each violation. In determining whether an act or practice is unconscionable the following circumstances shall be taken into consideration by the court: (1) whether the violator knowingly or with reason to know, took advantage of a consumer reasonably unable to protect his or her interests because of his or her age, physical infirmity, ignorance, illiteracy, inability to understand the language of an agreement or similar factor; (2) whether, at the time the consumer transaction was entered into, the violator knew or had reason to know that price grossly exceeded the price at which similar property or services were readily obtainable in similar transactions by like consumers; (3) whether, at the time the consumer transaction was entered into, the violator knew or had reason to know that there was no reasonable probability of payment of the obligation in full by the consumer; (4) whether the violator knew or had reason to know that the transaction he or she induced the consumer to enter into was excessively one-sided in favor of the violator.

C. Any person who is found to be in violation of the Oklahoma Consumer Protection Act in a civil action or who willfully violates the terms of any injunction or court order issued pursuant to the Consumer Protection Act shall forfeit and pay a civil penalty of not more than Ten Thousand Dollars (\$10,000.00) per violation, in addition to other penalties that may be imposed by the court, as the

court shall deem necessary and proper. For the purposes of this section, the district court issuing an injunction shall retain jurisdiction, and in such cases, the Attorney General, acting in the name of the state, or a district attorney may petition for recovery of civil penalties.

D. In administering and pursuing actions under this act, the Attorney General and a district attorney are authorized to sue for and collect reasonable expenses, attorney's fees, and investigation fees as determined by the court. Civil penalties or contempt penalties sued for and recovered by the Attorney General or a district attorney shall be used for the furtherance of their duties and activities under the Consumer Protection Act.

E. In addition to other penalties imposed by the Oklahoma Consumer Protection Act, any person convicted in a criminal proceeding of violating the Oklahoma Consumer Protection Act shall be guilty of a misdemeanor for the first offense and upon conviction thereof shall be subject to a fine not to exceed One Thousand Dollars (\$1,000.00), or imprisonment in the county jail for not more than one (1) year, or both such fine and imprisonment. If the value of the money, property or valuable thing referred to in this section is Five Hundred Dollars (\$500.00) or more or if the conviction is for a second or subsequent violation of the provisions of the Oklahoma Consumer Protection Act, any person convicted pursuant to this subsection shall be deemed guilty of a felony and shall be subject to imprisonment in the State Penitentiary, for not more than ten (10) years, or a fine not to exceed Five Thousand Dollars (\$5,000.00), or both such fine and imprisonment.

SECTION 3. This act shall become effective November 1, 2000.

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