ENGROSSED SENATE
BILL NO. 931

By: Coffee of the Senate

and

Phillips of the House

An Act relating to contracts; amending 15 O.S. 2001, Sections 752 and 753, which relate to the Oklahoma Consumer Protection Act; defining terms; prohibiting the printing of specified information on credit and debit card receipts; providing exceptions; establishing operative dates; adding to unlawful acts; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 15 O.S. 2001, Section 752, is amended to read as follows:

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

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

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

3. <u>"Credit card" means any instrument or device, whether known as a credit card, credit plate, charge plate or by any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining money, goods, services or anything else of value on credit. All credit cards lawfully issued shall be considered the property of the cardholders or the issuer for all purposes;</u>

4. "Debit card" means any instrument or device, whether known as a debit card or by any other name, issued with or without fee by an issuer for the use of the cardholder in depositing, obtaining or transferring funds from a consumer banking electronic facility;

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

~~4.~~ 6. "Examination" when used in reference to documentary material includes the inspection, study, or copying of any such material, and the taking of testimony under oath, or acknowledgment in respect to any such documentary material or copy thereof;

~~5.~~ 7. "Merchandise" includes any object, ware, good, commodity, intangible, real estate, or service;

~~6.~~ 8. "Closing out sale" means any offer to sell, or actual sale, to the public of goods, wares, or merchandise on the implied or direct representation that the sale is in anticipation of the termination of a business at its present location, or that the sale is being held other than in the ordinary course of business. It also shall mean but shall not be limited to any sale held or advertised as a "closing out sale", "going out of business sale", "discontinuance of business sale", "quitting business sale", "sell out", "liquidation", "loss of lease sale", "must vacate sale", "forced out of business sale", "fire sale", "smoke and water damage sale", "adjustment sale", "creditor's sale", "bankrupt sale", "insolvent sale", "mortgage sale", or other like or similar title;

~~7.~~ 9. "Advertisement" means any advertisement or announcement published in the news media including but not limited to the radio, television, newspapers, handbills, and mailers;

~~8.~~ 10. "License" means the written authorization issued by the court clerk of the district court in any county in this state to any person to conduct a closing out sale;

~~9.~~ 11. "Clerk" means the court clerk of the district court of any county of this state in which a person applying for a license intends to conduct a closing out sale;

~~10.~~ 12. "Automatic dial announcing device" means automatic equipment that:

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

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

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

~~11.~~ 13. "Deceptive trade practice" means a misrepresentation, omission or other practice that has deceived or could reasonably be expected to deceive or mislead a person to the detriment of that person. Such a practice may occur before, during or after a consumer transaction is entered into and may be written or oral;

~~12.~~ 14. "Unfair trade practice" means any practice which offends established public policy or if the practice is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers; and

~~13.~~ 15. "Cemetery" means any land or structure in this state dedicated to or used, or intended to be used, for the interment of human remains.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 752A of Title 15, unless there is created a duplication in numbering, reads as follows:

A. Except as otherwise provided in this section, a person who accepts credit cards or debit cards for a consumer transaction shall not print more than the last five digits of the account number or the expiration date upon any receipt provided to the cardholder.

B. This section applies only to receipts that are printed electronically and does not apply to transactions in which the sole means of recording the credit card or debit card number is by handwriting or by an imprint or copy of the card.

C. This section becomes operative on January 1, 2004, with respect to any cash register or other machine or device that electronically prints receipts for consumer transactions that is first put into use on or after January 1, 2004.

D. This section becomes operative on January 1, 2007, with respect to any cash register or other machine or device that electronically prints receipts for consumer transactions that is in use before January 1, 2004.

SECTION 3. AMENDATORY 59 O.S. 2001, Section 753, is amended to read as follows:

Section 753. 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 the person's business, the person:

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 the person 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;

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;

21. Violates any provision of Section 169.1 of Title 8 of the Oklahoma Statutes in fraudulently or intentionally failing or refusing to honor the contract to provide certain cemetery services specified in the contract entered into pursuant to the Perpetual Care Fund Act;

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

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

24. Refuses to honor gift certificates, warranties, or any other merchandise offered by a person in a consumer transaction executed prior to the closing of the business of the person without providing a purchaser a means of redeeming such merchandise or ensuring the warranties offered will be honored by another person;

25. Knowingly causes a charge to be made by any billing method to a consumer for services which the person knows was not authorized in advance by the consumer; ~~or~~

26. Knowingly causes a charge to be made by any billing method to a consumer for a product or products which the person knows was not authorized in advance by the consumer; or

27. Violates Section 2 of this act.

SECTION 4. This act shall become effective November 1, 2002.

Passed the Senate the 18th day of March, 2002.

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Presiding Officer of the Senate

Passed the House of Representatives the ____ day of _____, 2002.

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Presiding Officer of the House
of Representatives