STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1683 By: Blackburn

COMMITTEE SUBSTITUTE

An Act relating to contracts; amending 15 O.S. 2001, Sections 752, as amended by Section 1, Chapter 296, O.S.L. 2002 and 753, as amended by Section 3, Chapter 296, O.S.L. 2002 (15 O.S. Supp. 2002, Sections 752 and 753), which relate to the Oklahoma Consumer Protection Act; defining term; prohibiting certain mailings and solicitations; 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, as amended by Section 1, Chapter 296, O.S.L. 2002 (15 O.S. Supp. 2002, 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. "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;

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;

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;

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

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;

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

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;

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;

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;

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;

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~~

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; and

16. "Deceptive use of another's name in notification or solicitation" occurs when a business, or a person acting on its behalf, engages in the following activity:

a. through advertisement, solicitation or other notification, either verbally or through any other means, informs a consumer of the availability of any type of goods or services that are not free,

b. the name of an unrelated and unaffiliated person is mentioned in any manner,

c. the goods or services mentioned are not actually provided by the unrelated and unaffiliated person whose name is mentioned,

d. the business on whose behalf the notification or solicitation is made does not have a consensual right to mention the name of the unrelated and unaffiliated person, and

e. neither the actual name nor trade name of the business on whose behalf the notification or solicitation is being made is stated, nor the actual name or trade name of any actual provider of the goods or services is stated, so as to clearly identify for the consumer a name that is distinguishable and separate from the name of the unrelated and unaffiliated person whose name is mentioned in any manner in the notification or solicitation, and thereby a misleading implication or ambiguity is created, such that a consumer who is the recipient of the advertisement, solicitation or notification may reasonably but erroneously believe:

(1) that the goods or services whose availability is mentioned are made available by or through the unrelated and unaffiliated person whose name is mentioned, or

(2) that the unrelated and unaffiliated person whose name is mentioned is the one communicating with the consumer.

SECTION 2. AMENDATORY 15 O.S. 2001, Section 753, as amended by Section 3, Chapter 296, O.S.L. 2002 (15 O.S. Supp. 2002, 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;

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~~ 752A of this ~~act~~ title;

28. Makes deceptive use of another's name in notification or solicitation, as defined in Section 752 of this title;

29. Falsely states or implies that any person, product or service is recommended or endorsed by a named third person; or

30. Falsely states that information about the consumer, including but not limited to, the name, address or phone number of the consumer has been provided by a third person, whether that person is named or unnamed.

SECTION 3. This act shall become effective November 1, 2003.

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