

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 HOUSE BILL 1304

By: Kern

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5
6 AS INTRODUCED

7 An Act relating to contracts; amending 15 O.S. 2001,
8 Section 753, as last amended by Section 2, Chapter
9 61, O.S.L. 2003 (15 O.S. Supp. 2008, Section 753),
10 which relates to the Oklahoma Consumer Protection
11 Act; prohibiting the sale of certain recalled
12 products; defining term; and providing an effective
13 date.

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

15 SECTION 1. AMENDATORY 15 O.S. 2001, Section 753, as last
16 amended by Section 2, Chapter 61, O.S.L. 2003 (15 O.S. Supp. 2008,
17 Section 753), is amended to read as follows:

18 Section 753. A person engages in a practice which is declared
19 to be unlawful under the Oklahoma Consumer Protection Act, Section
20 751 et seq. of this title, when, in the course of the person's
21 business, the person:

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

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

4 3. Makes a false or misleading representation, knowingly or
5 with reason to know, as to affiliation, connection, association
6 with, or certification by another;

7 4. Makes a false or misleading representation or designation,
8 knowingly or with reason to know, of the geographic origin of the
9 subject of a consumer transaction;

10 5. Makes a false representation, knowingly or with reason to
11 know, as to the characteristics, ingredients, uses, benefits,
12 alterations, or quantities of the subject of a consumer transaction
13 or a false representation as to the sponsorship, approval, status,
14 affiliation or connection of a person therewith;

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

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

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

23 9. Advertises, knowingly or with reason to know, the subject of
24 a consumer transaction with intent not to supply reasonably expected

1 public demand, unless the advertisement discloses a limitation of
2 quantity;

3 10. Advertises under the guise of obtaining sales personnel
4 when in fact the purpose is to sell the subject of a consumer
5 transaction to the sales personnel applicants;

6 11. Makes false or misleading statements of fact, knowingly or
7 with reason to know, concerning the price of the subject of a
8 consumer transaction or the reason for, existence of, or amounts of
9 price reduction;

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

- 14 a. refusal to show the subject of a consumer transaction
15 advertised,
- 16 b. disparagement of the advertised subject of a consumer
17 transaction or the terms of sale,
- 18 c. requiring undisclosed tie-in sales or other
19 undisclosed conditions to be met prior to selling the
20 advertised subject of a consumer transaction,
- 21 d. refusal to take orders for the subject of a consumer
22 transaction advertised for delivery within a
23 reasonable time,

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1 e. showing or demonstrating defective subject of a
2 consumer transaction which the seller knows is
3 unusable or impracticable for the purpose set forth in
4 the advertisement,

5 f. accepting a deposit for the subject of a consumer
6 transaction and subsequently charging the buyer for a
7 higher priced item, or

8 g. willful failure to make deliveries of the subject of a
9 consumer transaction within a reasonable time or to
10 make a refund therefor upon the request of the
11 purchaser;

12 13. Conducts a closing out sale without having first obtained a
13 license as required in this act, Section 751 et seq. of this title;

14 14. Resumes the business for which the closing out sale was
15 conducted within one (1) year from the expiration date of the
16 closing out sale license;

17 15. Falsely states, knowingly or with reason to know, that
18 services, replacements or repairs are needed;

19 16. Violates any provision of the Oklahoma Health Spa Act,
20 Section 2000 et seq. of Title 59 of the Oklahoma Statutes;

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

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

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

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

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

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

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

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

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

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

7 27. Violates Section 752A of this title;

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

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

12 30. Falsely states that information about the consumer~~7~~
13 including, but not limited to, the name, address or phone number of
14 the consumer has been provided by a third person, whether that
15 person is named or unnamed; or

16 31. Knowingly sells a children's product which has been
17 recalled by the manufacturer, the United States Consumer Product
18 Safety Commission, or any other federal agency. For purposes of
19 this section, "children's product" shall mean a toy or other
20 article, other than clothing, intended for use by a child under
21 fourteen (14) years of age.

22 SECTION 2. This act shall become effective November 1, 2009.

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24 52-1-5189 LRB 12/08/08