SENATE FLOOR VERSION
February 27, 2012
As Amended

SENATE BILL NO. 1521 By: Johnson (Rob) of the Senate

and

Schwartz of the House

An Act relating to the Oklahoma Consumer Protection Act; stating legislative intent; amending 15 O.S. 2011, Sections 754 and 761.1, which relate to the Oklahoma Consumer Protection Act; modifying exceptions; modifying liability for certain violations; specifying method to determine certain damages; requiring certain proof; providing for codification; and providing an effective date.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 751A of Title 15, unless there is created a duplication in numbering, reads as follows:

It is the intent of the Legislature that in construing the Oklahoma Consumer Protection Act, courts shall be guided by the policies of the Federal Trade Commission and interpretations given by the Federal Trade Commission and the federal courts to Section **45(a)(1)** of the Federal Trade Commission Act (15 U.S.C., Section 45(a)(1)), as from time to time amended.

SECTION 2. AMENDATORY 15 O.S. 2011, Section 754, is amended to read as follows:

Section 754. Nothing in ~~this act~~ the Oklahoma Consumer Protection Act shall apply to:

1. Publishers, broadcasters, printers, or other persons insofar as an unlawful practice as defined in Section ~~3~~ 753 of this ~~act~~ title involves information that has been disseminated or reproduced on behalf of others without knowledge that it is an unlawful practice~~.~~;

2. Actions or transactions otherwise permitted or regulated ~~under laws administered~~ by the Federal Trade Commission, the Corporation Commission or any other regulatory body or officer acting under statutory authority of this state or the United States, or to acts done by retailers or other persons acting in good faith on the basis of information or matter supplied by others and without knowledge of the deceptive character of such information or matter; and

3. Claims seeking damages for conduct that results in bodily injury, death or damage to property other than the property that is the subject of the practice claimed to be a violation of the Oklahoma Consumer Protection Act.

SECTION 3. AMENDATORY 15 O.S. 2011, 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 Oklahoma Consumer Protection Act shall render the violator liable to the aggrieved consumer who

suffers an ascertainable loss of money or property, real or personal, as a result of the violation for the payment of actual damages sustained by the ~~customer~~ consumer and costs of litigation including reasonable ~~attorney's~~ attorney fees, and the aggrieved consumer shall have a private right of action for actual damages, including but not limited to, costs and ~~attorney's~~ attorney fees. Actual damages shall be measured by the consumer's out-of-pocket loss, which is an amount of money equal to the difference between the amount paid by the consumer for the good or service and the actual market value of the good or service that the consumer actually received. In any private action for damages for a violation of the Oklahoma 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~~ may 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~~ attorney fees, incurred with respect to such claim or defense.

B. In order to recover damages in an action for a violation of the Oklahoma Consumer Protection Act, a person shall be required to

prove that the person reasonably relied to the detriment of the person upon the practice alleged to be a violation of the Oklahoma Consumer Protection Act, and that the damages were proximately caused by the practice alleged to be a violation of the Oklahoma Consumer Protection Act.

C. The commission of any act or practice declared to be a violation of the Oklahoma 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~~

1. Whether the violator knowingly or with reason to know, took advantage of a consumer reasonably unable to protect ~~his or her~~ the consumer's own interests because of ~~his or her~~ the age, physical infirmity, ignorance, illiteracy of the consumer, or the inability to understand the language of an agreement or similar factor; ~~(2) whether,~~

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,~~

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~~ and

4. Whether the violator knew or had reason to know that the transaction ~~he or she~~ the violator induced the consumer to enter into was excessively one-sided in favor of the violator.

~~C.~~ D. 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.~~ E. In administering and pursuing actions under ~~this act~~ the Oklahoma Consumer Protection Act, the Attorney General and a district attorney are authorized to sue for and collect reasonable expenses, ~~attorney's~~ attorney 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 Oklahoma Consumer Protection Act.

~~E.~~ F. 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 4. This act shall become effective November 1, 2012.

COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 2-21-12 - DO PASS, As Amended and Coauthored.