

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 HOUSE BILL 1318

By: Morgan

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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 1, Chapter
9 61, O.S.L. 2003 (15 O.S. Supp. 2010, Section 753),
10 which relates to the Oklahoma Consumer Protection
11 Act; adding unlawful practice; defining terms;
12 prohibiting free offers unless certain conditions are
13 met; providing exception; stating exception shall not
14 extend to affiliates unless certain conditions apply;
15 providing for punishments for violations; providing
16 for codification; and providing an effective date.

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

18 SECTION 1. AMENDATORY 15 O.S. 2001, Section 753, as last
19 amended by Section 1, Chapter 61, O.S.L. 2003 (15 O.S. Supp. 2010,
20 Section 753), is amended to read as follows:

21 Section 753. A person engages in a practice which is declared
22 to be unlawful under the Oklahoma Consumer Protection Act, Section
23 751 et seq. of this title, when, in the course of the person's
24 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;

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 or Section 2 of this act;

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,
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.

16 SECTION 2. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 753.1 of Title 15, unless there
18 is created a duplication in numbering, reads as follows:

19 A. As used in this section:

20 1. "Established business relationship" means a prior or
21 existing relationship formed by a voluntary two-way communication
22 between a person and a consumer with an exchange of consideration on
23 the basis of the consumer's purchase from or transaction with the
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1 person within the eighteen (18) months immediately preceding the
2 date of a free offer; and

3 2. "Free offer" means an offer of a rebate or of products or
4 services without cost to a consumer by a person under which, as a
5 result of accepting the rebate, products or services, the consumer
6 is required to contact the person to avoid incurring a financial
7 obligation for receiving additional products or services.

8 B. A person shall not make a free offer to a consumer in this
9 state unless, at the time the consumer agrees to the free offer:

10 1. The person obtains directly from the consumer information
11 necessary for billing the consumer; and

12 2. The person provides the consumer with clear and conspicuous
13 information regarding the terms of the free offer, including any
14 additional financial obligations that may be incurred as a result of
15 accepting the free offer.

16 C. This section shall not apply to a free offer when the person
17 and the consumer have an established business relationship. The
18 consumer's established business relationship with the person does
19 not extend to affiliates of the person, unless the consumer would
20 reasonably expect an affiliate to be included given the nature and
21 type of goods or services offered by the affiliate and the identity
22 of the affiliate.

23 D. A person violating this section shall commit an unfair or
24 deceptive trade practice and be subject to action by the Attorney

1 General or a district attorney as described in Section 756.1 of
2 Title 15 of the Oklahoma Statutes.

3 SECTION 3. This act shall become effective November 1, 2011.

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