

1 STATE OF OKLAHOMA

2 2nd Session of the 53rd Legislature (2012)

3 SENATE BILL 1497

By: Brinkley

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6 AS INTRODUCED

7 An Act relating to the Oklahoma Consumer Protection  
8 Act; amending 15 O.S. 2011, Sections 753 and 768,  
9 which relate to unlawful practices and objections to  
10 going out of business application; prohibiting  
11 resumption of business before certain length of time  
12 from closing out sale license expiration; setting  
13 length of time; increasing time between sales as a  
14 ground to deny going out of business application; and  
15 declaring an emergency.

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

17 SECTION 1. AMENDATORY 15 O.S. 2011, Section 753, is  
18 amended to read as follows:

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

23 1. Represents, knowingly or with reason to know, that the  
24 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 the Oklahoma Consumer Protection Act;

15 14. Resumes the business for which the closing out sale was  
16 conducted within ~~one (1) year~~ thirty-six (36) months from the  
17 expiration date of the closing out sale license;

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

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

22 17. Violates any provision of the Home Repair Fraud Act,  
23 ~~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;

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       31. Acting as a debt collector, contacts a debtor and threatens  
17 to file a suit against the debtor over a debt barred by the statute  
18 of limitations which has passed for filing suit for such debt; or

19       32. Acting as a debt collector, contacts a debtor and uses  
20 obscene or profane language to collect a debt.

21       SECTION 2.       AMENDATORY       15 O.S. 2011, Section 768, is  
22 amended to read as follows:

23       Section 768. Upon receipt of an application, the clerk shall  
24 forward a copy of the application to the district attorney of the

1 same district the court clerk is located in who may cause ~~such~~ an  
2 investigation as deemed necessary ~~of~~ for the facts contained  
3 therein. No license shall be issued by the clerk before ten (10)  
4 days has elapsed from the filing of the application within which  
5 period the district attorney may file an objection to the  
6 application, setting forth one or more of the following facts or  
7 circumstances, any one which shall be grounds for denying the  
8 application for a license:

9 1. That the applicant has been granted more than one license  
10 for a "closing out sale" within ~~one year~~ thirty-six (36) months  
11 preceding the date of the filing of the application;

12 2. That the inventory includes goods, wares or merchandise on  
13 consignment or purchased by the applicant or added to ~~his~~ the stock  
14 in contemplation of a closing out sale and for the purpose of  
15 selling the same at such sale. For the purpose of this paragraph,  
16 any unusual addition to the stock of goods, wares and merchandise  
17 made within ninety (90) days prior to the filing of an application,  
18 unless so stated and explained in the application, shall be prima  
19 facie evidence that such addition was made in contemplation of a  
20 closing out sale and for the purpose of selling such stock at the  
21 sale;

22 3. That the applicant, in the ticketing of the goods, wares and  
23 merchandise to be offered at the sale, has misrepresented the value  
24 and original retail price of the goods; or

1 4. That any representation made in the application is false.

2 SECTION 3. It being immediately necessary for the preservation  
3 of the public peace, health and safety, an emergency is hereby  
4 declared to exist, by reason whereof this act shall take effect and  
5 be in full force from and after its passage and approval.

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