

1 STATE OF OKLAHOMA

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

3 SENATE BILL 1521

By: Johnson (Rob)

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5
6 AS INTRODUCED

7 An Act relating to the Oklahoma Consumer Protection
8 Act; stating legislative intent; amending 15 O.S.
9 2011, Sections 754 and 761.1, which relate to the
10 Oklahoma Consumer Protection Act; modifying
11 exceptions; modifying liability for certain
12 violations; specifying method to determine certain
13 damages; requiring certain proof; providing for
14 codification; and providing an effective date.

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

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

19 It is the intent of the Legislature that in construing the
20 Oklahoma Consumer Protection Act, courts shall be guided by the
21 policies of the Federal Trade Commission and interpretations given
22 by the Federal Trade Commission and the federal courts to Section
23 5(a)(1) of the Federal Trade Commission Act (15 U.S.C., Section
24 45(a)(1)), as from time to time amended.

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

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

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

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

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

20 SECTION 3. AMENDATORY 15 O.S. 2011, Section 761.1, is
21 amended to read as follows:

22 Section 761.1. A. The commission of any act or practice
23 declared to be a violation of the Oklahoma Consumer Protection Act
24 shall render the violator liable to the aggrieved consumer who

1 suffers an ascertainable loss of money or property, real or
2 personal, as a result of the violation for the payment of actual
3 damages sustained by the ~~customer~~ consumer and costs of litigation
4 including reasonable ~~attorney's~~ attorney fees, and the aggrieved
5 consumer shall have a private right of action for actual damages,
6 including but not limited to, costs and ~~attorney's~~ attorney fees.
7 Actual damages shall be measured by the consumer's out-of-pocket
8 loss, which is an amount of money equal to the difference between
9 the amount paid by the consumer for the good or service and the
10 actual market value of the good or service that the consumer
11 actually received. In any private action for damages for a
12 violation of the Oklahoma Consumer Protection Act the court shall,
13 subsequent to adjudication on the merits and upon motion of the
14 prevailing party, determine whether a claim or defense asserted in
15 the action by a nonprevailing party was asserted in bad faith, was
16 not well grounded in fact, or was unwarranted by existing law or a
17 good faith argument for the extension, modification, or reversal of
18 existing law. Upon so finding, the court ~~shall~~ may enter a judgment
19 ordering such nonprevailing party to reimburse the prevailing party
20 an amount not to exceed Ten Thousand Dollars (\$10,000.00) for
21 reasonable costs, including ~~attorney's~~ attorney fees, incurred with
22 respect to such claim or defense.

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

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

6 C. The commission of any act or practice declared to be a
7 violation of the Oklahoma Consumer Protection Act, if such act or
8 practice is also found to be unconscionable, shall render the
9 violator liable to the aggrieved customer for the payment of a civil
10 penalty, recoverable in an individual action only, in a sum set by
11 the court of not more than Two Thousand Dollars (\$2,000.00) for each
12 violation. In determining whether an act or practice is
13 unconscionable the following circumstances shall be taken into
14 consideration by the court: ~~(1) whether~~

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

21 2. Whether, at the time the consumer transaction was entered
22 into, the violator knew or had reason to know that price grossly
23 exceeded the price at which similar property or services were
24

1 readily obtainable in similar transactions by like consumers; ~~(3)~~
2 ~~whether,~~

3 3. Whether, at the time the consumer transaction was entered
4 into, the violator knew or had reason to know that there was no
5 reasonable probability of payment of the obligation in full by the
6 consumer; ~~(4) whether~~ and

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

10 ~~C.~~ D. Any person who is found to be in violation of the
11 Oklahoma Consumer Protection Act in a civil action or who willfully
12 violates the terms of any injunction or court order issued pursuant
13 to the Consumer Protection Act shall forfeit and pay a civil penalty
14 of not more than Ten Thousand Dollars (\$10,000.00) per violation, in
15 addition to other penalties that may be imposed by the court, as the
16 court shall deem necessary and proper. For the purposes of this
17 section, the district court issuing an injunction shall retain
18 jurisdiction, and in such cases, the Attorney General, acting in the
19 name of the state, or a district attorney may petition for recovery
20 of civil penalties.

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

1 determined by the court. Civil penalties or contempt penalties sued
2 for and recovered by the Attorney General or a district attorney
3 shall be used for the furtherance of their duties and activities
4 under the Oklahoma Consumer Protection Act.

5 ~~E.~~ F. In addition to other penalties imposed by the Oklahoma
6 Consumer Protection Act, any person convicted in a criminal
7 proceeding of violating the Oklahoma Consumer Protection Act shall
8 be guilty of a misdemeanor for the first offense and upon conviction
9 thereof shall be subject to a fine not to exceed One Thousand
10 Dollars (\$1,000.00), or imprisonment in the county jail for not more
11 than one (1) year, or both such fine and imprisonment. If the value
12 of the money, property or valuable thing referred to in this section
13 is Five Hundred Dollars (\$500.00) or more or if the conviction is
14 for a second or subsequent violation of the provisions of the
15 Oklahoma Consumer Protection Act, any person convicted pursuant to
16 this subsection shall be deemed guilty of a felony and shall be
17 subject to imprisonment ~~in the State Penitentiary,~~ for not more than
18 ten (10) years, or a fine not to exceed Five Thousand Dollars
19 (\$5,000.00), or both such fine and imprisonment.

20 SECTION 4. This act shall become effective November 1, 2012.

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