

1 STATE OF OKLAHOMA

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

3 SENATE BILL 444

By: Brinkley

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5
6 AS INTRODUCED

7 An Act relating to the Oklahoma Consumer Protection
8 Act; amending 15 O.S. 2001, Section 753, as last
9 amended by Section 2, Chapter 61, O.S.L. 2003 (15
10 O.S. Supp. 2010, Section 753), which relates to
11 unlawful consumer practices; adding prohibition to
12 using certain words for certain purpose; prohibiting
13 use of certain words in business name; providing
14 certain exception; prohibiting certain exceptions or
15 grandfathering; granting certain time periods to
16 obtain fictitious name and correct certain documents
17 and articles; providing for violations; providing for
18 codification; providing an effective date; and
19 declaring an emergency.

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

21 SECTION 1. AMENDATORY 15 O.S. 2001, Section 753, as last
22 amended by Section 2, Chapter 61, O.S.L. 2003 (15 O.S. Supp. 2010,
23 Section 753), is amended to read as follows:

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

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

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

7 3. Makes a false or misleading representation, knowingly or
8 with reason to know, as to affiliation, connection, association
9 with, or certification by another;

10 4. Makes a false or misleading representation or designation,
11 knowingly or with reason to know, of the geographic origin of the
12 subject of a consumer transaction;

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

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

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

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

3 9. Advertises, knowingly or with reason to know, the subject of
4 a consumer transaction with intent not to supply reasonably expected
5 public demand, unless the advertisement discloses a limitation of
6 quantity;

7 10. Advertises under the guise of obtaining sales personnel
8 when in fact the purpose is to sell the subject of a consumer
9 transaction to the sales personnel applicants;

10 11. Makes false or misleading statements of fact, knowingly or
11 with reason to know, concerning the price of the subject of a
12 consumer transaction or the reason for, existence of, or amounts of
13 price reduction;

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

18 a. refusal to show the subject of a consumer transaction
19 advertised,

20 b. disparagement of the advertised subject of a consumer
21 transaction or the terms of sale,

22 c. requiring undisclosed tie-in sales or other
23 undisclosed conditions to be met prior to selling the
24 advertised subject of a consumer transaction,

- 1 d. refusal to take orders for the subject of a consumer
2 transaction advertised for delivery within a
3 reasonable time,
4 e. showing or demonstrating defective subject of a
5 consumer transaction which the seller knows is
6 unusable or impracticable for the purpose set forth in
7 the advertisement,
8 f. accepting a deposit for the subject of a consumer
9 transaction and subsequently charging the buyer for a
10 higher priced item, or
11 g. willful failure to make deliveries of the subject of a
12 consumer transaction within a reasonable time or to
13 make a refund therefor upon the request of the
14 purchaser;

15 13. Conducts a closing out sale without having first obtained a
16 license as required in ~~this act, Section 751 et seq. of this title~~
17 the Oklahoma Consumer Protection Act;

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

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

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

- 1 17. Violates any provision of the Home Repair Fraud Act,
2 ~~Section 765.1 et seq. of this title;~~
- 3 18. Violates any provision of the Consumer Disclosure of Prizes
4 and Gifts Act, ~~Section 996.1 et seq. of Title 21 of the Oklahoma~~
5 ~~Statutes;~~
- 6 19. Violates any provision of Section 755.1 of this title or
7 Section 1847a of Title 21 of the Oklahoma Statutes;
- 8 20. Commits an unfair or deceptive trade practice as defined in
9 Section 752 of this title;
- 10 21. Violates any provision of Section 169.1 of Title 8 of the
11 Oklahoma Statutes in fraudulently or intentionally failing or
12 refusing to honor the contract to provide certain cemetery services
13 specified in the contract entered into pursuant to the Perpetual
14 Care Fund Act;
- 15 22. Misrepresents a mail solicitation as an invoice or as a
16 billing statement;
- 17 23. Offers to purchase a mineral or royalty interest through an
18 offer that resembles an oil and gas lease and that the consumer
19 believed was an oil and gas lease;
- 20 24. Refuses to honor gift certificates, warranties, or any
21 other merchandise offered by a person in a consumer transaction
22 executed prior to the closing of the business of the person without
23 providing a purchaser a means of redeeming such merchandise or
24 ensuring the warranties offered will be honored by another person;

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; or

16 31. Advertises or represents by the use of the words
17 "wholesale" or "at cost", knowingly or with reason to know, that the
18 subject of a consumer transaction is falsely designed to attract
19 consumers and that the price or cost of the subject of the consumer
20 transaction is not the usual and customary wholesale price or cost
21 that a retail merchant would be charged for purposes of resale of
22 the subject of the consumer transaction.

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

4 No business shall use the words "wholesale" or "at cost" in its
5 business name, advertising or in any other manner designed to
6 attract consumers, unless at least seventy-five percent (75%) of its
7 actual sales are from retail merchants who purchase the business
8 products solely for resale purposes.

9 No business name shall be exempted or grandfathered under this
10 section. On the effective date of this act, any business that is
11 using the words "wholesale" in its business name and not meeting the
12 required percentage of actual product sales to retail merchants for
13 resale shall have ninety (90) days to apply for and obtain a new
14 fictitious name from the Secretary of State, and an additional
15 ninety (90) days thereafter to correct any legal documents, signage
16 and other articles representing the business name to the public in
17 violation of the provisions of this section. It shall be an
18 additional violation for the business to fail to comply with the
19 ninety-day requirement to obtain a new fictitious name from the
20 Secretary of State, change legal documents, signage and other
21 articles representing the business to the public in violation of
22 this section, or to delete the words "wholesale" or "at cost" from
23 the business name.

24 SECTION 3. This act shall become effective July 1, 2011.

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

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