STATE OF OKLAHOMA

2nd Session of the 55th Legislature (2016)

SENATE BILL 1330 By: Sparks

AS INTRODUCED

An Act relating to the Oklahoma Consumer Protection Act; amending 15 O.S. 2011, Section 753, as amended by Section 1, Chapter 258, O.S.L. 2012 (15 O.S. Supp. 2015, Section 753), which relates to unlawful business practices; prohibiting use of non-disparagement clauses; and providing an effective date.

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

SECTION 1. AMENDATORY 15 O.S. 2011, Section 753, as amended by Section 1, Chapter 258, O.S.L. 2012 (15 O.S. Supp. 2015, Section 753), is amended to read as follows:

Section 753. A person engages in a practice which is declared to be unlawful under the Oklahoma Consumer Protection Act when, in the course of the person's 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;

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

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

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

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

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

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

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

9. Advertises, knowingly or with reason to know, the subject of a consumer transaction with intent not to supply reasonably expected

public demand, unless the advertisement discloses a limitation of quantity;

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

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

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

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

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

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

d. refusal to take orders for the subject of a consumer transaction advertised for delivery within a reasonable time,

e. showing or demonstrating defective subject of a consumer transaction which the seller knows is unusable or impracticable for the purpose set forth in the advertisement,

f. accepting a deposit for the subject of a consumer transaction and subsequently charging the buyer for a higher priced item, or

g. willful failure to make deliveries of the subject of a consumer transaction within a reasonable time or to make a refund therefor upon the request of the purchaser;

13. Conducts a closing out sale without having first obtained a license as required in the Oklahoma Consumer Protection Act;

14. Resumes the business for which the closing out sale was conducted within thirty-six (36) months from the expiration date of the closing out sale license;

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

16. Violates any provision of the Oklahoma Health Spa Act;

17. Violates any provision of the Home Repair Fraud Act;

18. Violates any provision of the Consumer Disclosure of Prizes and Gifts Act;

19. Violates any provision of Section 755.1 of this title or Section 1847a of Title 21 of the Oklahoma Statutes;

20. Commits an unfair or deceptive trade practice as defined in Section 752 of this title;

21. Violates any provision of Section 169.1 of Title 8 of the Oklahoma Statutes in fraudulently or intentionally failing or refusing to honor the contract to provide certain cemetery services specified in the contract entered into pursuant to the Perpetual Care Fund Act;

22. Misrepresents a mail solicitation as an invoice or as a billing statement;

23. Offers to purchase a mineral or royalty interest through an offer that resembles an oil and gas lease and that the consumer believed was an oil and gas lease;

24. Refuses to honor gift certificates, warranties, or any other merchandise offered by a person in a consumer transaction executed prior to the closing of the business of the person without providing a purchaser a means of redeeming such merchandise or ensuring the warranties offered will be honored by another person;

25. Knowingly causes a charge to be made by any billing method to a consumer for services which the person knows was not authorized in advance by the consumer;

26. Knowingly causes a charge to be made by any billing method to a consumer for a product or products which the person knows was not authorized in advance by the consumer;

27. Violates Section 752A of this title;

28. Makes deceptive use of another's name in notification or solicitation, as defined in Section 752 of this title;

29. Falsely states or implies that any person, product, or service is recommended or endorsed by a named third person;

30. Falsely states that information about the consumer, including but not limited to, the name, address, or phone number of the consumer has been provided by a third person, whether that person is named or unnamed;

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

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

33. Acting as a seller or lessor of consumer goods or services includes or requires a non-disparagement clause in any contract or proposed contract as a condition of such sale or lease and which clause waives or attempts to waive a consumer's right to make any negative statement believed by the consumer to be a truthful statement regarding the seller or lessor, its employees or agents, or concerning the goods or services; or

34. Acting as a seller or lessor of consumer goods or services threatens or seeks to enforce any non-disparagement clause made unlawful under paragraph 33 of this section or otherwise penalizes

or attempts to penalize a consumer for making any statement protected under paragraph 33 of this section.

SECTION 2. This act shall become effective November 1, 2016.

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