An Act

ENROLLED SENATE
BILL NO. 1497

By: Brinkley of the Senate

and

Mulready of the House

An Act relating to the Oklahoma Consumer Protection Act; amending 15 O.S. 2011, Sections 753 and 768, which relate to unlawful practices and objections to going out of business application; prohibiting resumption of business before certain length of time from closing out sale license expiration; setting length of time; increasing time between sales as a ground to deny going out of business application; amending 59 O.S. 2001, Section 2004, which relates to health spa contracts or membership agreements; allowing for penalty-free cancellation in certain circumstances; and declaring an emergency.

SUBJECT: Consumer protection

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

SECTION 1. AMENDATORY 15 O.S. 2011, 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~~, Section 751 et seq. of this title,~~ 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 ~~this act, Section 751 et seq. of this title~~ the Oklahoma Consumer Protection Act;

14. Resumes the business for which the closing out sale was conducted within ~~one (1) year~~ 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~~, Section 2000 et seq. of Title 59 of the Oklahoma Statutes~~;

17. Violates any provision of the Home Repair Fraud Act~~, Section 765.1 et seq. of this title~~;

18. Violates any provision of the Consumer Disclosure of Prizes and Gifts Act~~, Section 996.1 et seq. of Title 21 of the Oklahoma Statutes~~;

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.

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

Section 768. Upon receipt of an application, the clerk shall forward a copy of the application to the district attorney of the same district the court clerk is located in who may cause ~~such~~ an investigation as deemed necessary ~~of~~ for the facts contained therein. No license shall be issued by the clerk before ten (10) days has elapsed from the filing of the application within which period the district attorney may file an objection to the application, setting forth one or more of the following facts or circumstances, any one which shall be grounds for denying the application for a license:

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

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

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

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

SECTION 3. AMENDATORY 59 O.S. 2011, Section 2004, is amended to read as follows:

Section 2004. Every health spa contract or membership agreement for the sale of future health spa services which are paid for in advance or which the buyer agrees to pay for in future installments shall be in writing and shall contain the following provisions:

1. A provision for the penalty-free cancellation of the contract or membership agreement within three (3) business days of its making and refund upon such notice, of all monies paid under the contract or membership agreement;

2. A provision for the cancellation of the contract or membership agreement if the health spa relocates or goes out of business and fails to provide alternative facilities within eight (8) miles of the location designated in the health spa contract or membership agreement. Upon receipt of such notice, the health spa shall refund to the buyer funds paid or accepted in payment of the contract or membership agreement in an amount computed by dividing the contract price by the number of weeks in the contract or

membership agreement term and multiplying the result by the number of weeks remaining in the contract or membership agreement term;

3. A provision for the cancellation of the contract or membership agreement if the buyer dies or becomes physically unable to use a substantial portion of the services for thirty (30) or more consecutive days. Upon receipt of such notice, the health spa shall refund to the buyer funds paid or accepted in payment of the contract or membership agreement in an amount computed by dividing the contract price by the number of weeks in the contract or membership agreement term and multiplying the result by the number of weeks remaining in the contract or membership agreement term. In the case of disability, the health spa may require the buyer to submit to a physical examination by a doctor agreeable to the buyer and the health spa. The cost of the examination shall be borne by the health spa~~.~~;

4. A provision that:

a. to cancel a contract or membership agreement, the buyer shall notify the health spa of cancellation in writing, by certified mail, return receipt requested, or personal delivery, to the address specified in the health spa contract or membership agreement~~.~~,

b. all moneys to be refunded upon cancellation of the health spa contract or membership agreement shall be paid within thirty (30) days of receipt of the notice of cancellation~~.~~, and

c. if the customer has executed any credit or lien agreement with the health spa to pay for all or part of health spa services, any such agreement executed by the buyer shall also be returned within sixty (60) days after such cancellation;

5. A provision for the penalty-free cancellation of the contract or membership agreement if the health spa changes ownership and relocates and fails to provide notice of the change of ownership and relocation within thirty (30) days through certified mail to the buyer; and

6. A provision for the penalty-free cancellation of the contract or membership agreement if the health spa changes ownership and relocates and fails to obtain written authorization from the buyer to continue to collect automatic bank draft deductions. If the health spa fails to secure written authorization from the buyer, the health spa shall refund to the buyer any funds drafted after the change of ownership and relocation.

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

Passed the Senate the 8th day of May, 2012.

Presiding Officer of the Senate

Passed the House of Representatives the 9th day of April, 2012.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Governor this 9th

day of May, 20 12,

at 3:00 o'clock P M.

By: Jessica R Pryor

Approved by the Governor of the State of Oklahoma the 15th day of

May, 20 12, at 12:30 o'clock P M.

Mary Fallin

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Secretary of State this

15th day of May, 20 12,

at 2:05 o'clock P M.

By: Michelle R Day