

1 STATE OF OKLAHOMA

2 2nd Session of the 55th Legislature (2016)

3 SENATE BILL 1226

By: Jolley

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5
6 AS INTRODUCED

7 An Act relating to recovery of damages; requiring
8 certain guidance in construing certain Act; amending
9 15 O.S. 2011, Sections 754 and 761.1, which relate to
10 exemptions and liability under the Consumer
11 Protection Act; updating language; adding certain
12 exemption; clarifying certain liability; providing
13 method to determine certain damages; making certain
14 judgment permissible; requiring certain proof for
15 certain recovery; providing for codification; and
16 providing an effective date.

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

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

21 In construing the Oklahoma Consumer Protection Act, courts shall
22 be guided by the policies of the Federal Trade Commission and
23 interpretations given by the Federal Trade Commission and federal
24 courts to Section 45(a)(1) of the Federal Trade Commission Act (15
U.S.C., Section 45(a)(1)), and subsequent amendments.

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 Corporation Commission or any other
10 regulatory body or officer acting under statutory authority of this
11 state or the United States, or to acts done by retailers or other
12 persons acting in good faith on the basis of information or matter
13 supplied by others and without knowledge of the deceptive character
14 of such information or matter; and

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

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

21 Section 761.1. A. The commission of any act or practice
22 declared to be a violation of the Oklahoma Consumer Protection Act
23 shall render the violator liable to the aggrieved consumer who
24 suffers an ascertainable loss of money or property, real or

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

22 B. To recover damages in an action for a violation of the
23 Oklahoma Consumer Protection Act, a person shall prove that he or
24 she reasonably relied to the person's detriment upon the practice

1 alleged to be a violation of the Oklahoma Consumer Protection Act,
2 and that damages were proximately caused by such practice.

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

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

17 2. Whether, at the time the consumer transaction was entered
18 into, the violator knew or had reason to know that the price grossly
19 exceeded the price at which similar property or services were
20 readily obtainable in similar transactions by like consumers; ~~(3)~~
21 ~~whether~~

22 3. Whether, at the time the consumer transaction was entered
23 into, the violator knew or had reason to know that there was no
24

1 reasonable probability of payment of the obligation in full by the
2 consumer; ~~(4) whether and~~

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

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

17 ~~D.~~ E. In administering and pursuing actions under ~~this act~~ the
18 Oklahoma Consumer Protection Act, the Attorney General and a
19 district attorney are authorized to sue for and collect reasonable
20 expenses, ~~attorney's~~ attorney fees, and investigation fees as
21 determined by the court. Civil penalties or contempt penalties sued
22 for and recovered by the Attorney General or a district attorney
23 shall be used for the furtherance of their duties and activities
24 under the Oklahoma Consumer Protection Act.

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

16 SECTION 4. This act shall become effective November 1, 2016.

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