

1 STATE OF OKLAHOMA

2 1st Session of the 57th Legislature (2019)

3 HOUSE BILL 2383

By: Kannady

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6 AS INTRODUCED

7 An Act relating to contracts; amending 15 O.S. 2011,
8 Section 761.1, which relates to liability under the
9 Consumer Protection Act; allowing certain individuals
10 to employ broad discretion to use funds recovered;
11 and providing an effective date.

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

13 SECTION 1. AMENDATORY 15 O.S. 2011, Section 761.1, is
14 amended to read as follows:

15 Section 761.1 A. The commission of any act or practice
16 declared to be a violation of the Consumer Protection Act shall
17 render the violator liable to the aggrieved consumer for the payment
18 of actual damages sustained by the customer and costs of litigation
19 including reasonable attorney's fees, and the aggrieved consumer
20 shall have a private right of action for damages, including but not
21 limited to, costs and attorney's fees. In any private action for
22 damages for a violation of the Consumer Protection Act the court
23 shall, subsequent to adjudication on the merits and upon motion of
24 the prevailing party, determine whether a claim or defense asserted

1 in the action by a nonprevailing party was asserted in bad faith,
2 was not well grounded in fact, or was unwarranted by existing law or
3 a good faith argument for the extension, modification, or reversal
4 of existing law. Upon so finding, the court shall enter a judgment
5 ordering such nonprevailing party to reimburse the prevailing party
6 an amount not to exceed Ten Thousand Dollars (\$10,000.00) for
7 reasonable costs, including attorney's fees, incurred with respect
8 to such claim or defense.

9 B. The commission of any act or practice declared to be a
10 violation of the Consumer Protection Act, if such act or practice is
11 also found to be unconscionable, shall render the violator liable to
12 the aggrieved customer for the payment of a civil penalty,
13 recoverable in an individual action only, in a sum set by the court
14 of not more than Two Thousand Dollars (\$2,000.00) for each
15 violation. In determining whether an act or practice is
16 unconscionable the following circumstances shall be taken into
17 consideration by the court: (1) whether the violator knowingly or
18 with reason to know, took advantage of a consumer reasonably unable
19 to protect his or her interests because of his or her age, physical
20 infirmity, ignorance, illiteracy, inability to understand the
21 language of an agreement or similar factor; (2) whether, at the time
22 the consumer transaction was entered into, the violator knew or had
23 reason to know that price grossly exceeded the price at which
24 similar property or services were readily obtainable in similar

1 transactions by like consumers; (3) whether, at the time the
2 consumer transaction was entered into, the violator knew or had
3 reason to know that there was no reasonable probability of payment
4 of the obligation in full by the consumer; (4) whether the violator
5 knew or had reason to know that the transaction he or she induced
6 the consumer to enter into was excessively one-sided in favor of the
7 violator.

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

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

1 and activities under ~~the Consumer Protection Act~~ law. The Attorney
2 General and a district attorney shall have broad discretion to use
3 the funds recovered under the Consumer Protection Act in the
4 exercise of their powers.

5 E. 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 2. This act shall become effective November 1, 2019.
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