

*As Engrossed: 2/28/91 3/27/91*

1 **State of Arkansas**  
2 **78th General Assembly**  
3 **Regular Session, 1991**  
4 **By: Senator Hopkins**

**A BILL ACT 1177 OF 1991**  
**SENATE BILL 554**

**For An Act To Be Entitled**

8 "AN ACT TO AMEND ARKANSAS CODE TITLE 17, CHAPTER 34  
9 CONCERNING PROFESSIONAL FUND RAISERS AND SOLICITORS; AN  
10 ACT TO AMEND ARKANSAS CODE TITLE 4, CHAPTER 28, SUBCHAPTER  
11 4 CONCERNING SOLICITATION OF CONTRIBUTIONS; TO AMEND  
12 ARKANSAS CODE TITLE 4, CHAPTER 88 CONCERNING DECEPTIVE  
13 TRADE PRACTICES; AND FOR OTHER PURPOSES."

14  
15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

16  
17 *SECTION 1. Arkansas Code Title 17, Chapter 34 is amended to read as*  
18 *follows:*

19 *"CHAPTER 34 - PROFESSIONAL FUND RAISERS AND SOLICITORS*

20 *17-34-101. Definitions.*

21 *As used in this chapter, unless the context otherwise requires:*

22 *(1) 'Charitable' organization means any benevolent, philanthropic,*  
23 *patriotic, civic, or eleemosynary person;*

24 *(2) 'Professional fund raiser' means any person who, for compensation*  
25 *or any other consideration, plans, conducts, or manages in this state the*  
26 *solicitation of contributions for or on behalf of any charitable organization*  
27 *or any other person, or any person who engages in the business of, or holds*  
28 *himself out to persons in this state as independently engaged in the business*  
29 *of soliciting contributions for such purpose, but shall not include a bona*  
30 *fide officer or employee of a charitable organization;*

31 *(3) 'Professional solicitor' means any person who is employed or*  
32 *retained for compensation by a professional fund raiser to solicit*  
33 *contributions in this state for charitable purposes;*

34 *(4) 'Person' means any individual, organization, group, association,*  
35 *partnership, corporation, or any combination of them;*

36 *(5) 'Promotion' means, for each charitable organization represented,*

1 each and every fundraising drive or campaign for which contributions are  
2 solicited. Similar or identical promotions on behalf of different charitable  
3 organizations constitute separate and distinct promotions;

4 (6) 'Solicitation' means each request for a contribution.

5

6 17-34-102. Exemptions.

7 This chapter shall not apply to any solicitation made by or on behalf of  
8 any church, missionary, or religious organization, or to any solicitation  
9 directed to persons outside this state, excepting the provisions of §17-34-  
10 103(b).

11

12 17-34-103. Penalties - Injunction.

13 (a) Any professional fund raiser violating a provision of this chapter  
14 shall be guilty of a Class A misdemeanor.

15 (b) In connection with any promotion, any person employing any device,  
16 scheme, or artifice to defraud or obtaining money or property by means of any  
17 false pretense, misrepresentation, or promise which the actor does not intend  
18 to perform shall be guilty of a Class D felony for each promotion.

19 (c) Upon complaint of any person or other information coming to the  
20 attention of the prosecuting attorney or Attorney General, the prosecuting  
21 attorney or Attorney General may institute an action in the proper court to  
22 enjoin a professional fund raiser or professional solicitor from violating any  
23 provision of this chapter.

24

25 17-34-104. Fund raisers - Registration and renewal.

26 (a) No person shall act as a professional fund raiser for any  
27 charitable organization until he has first registered with the Attorney  
28 General.

29 (b) Applications for registration shall be in writing, under oath, in  
30 the form prescribed by the Attorney General, and shall be accompanied by an  
31 annual fee in the sum of one hundred dollars (\$100.00).

32 (c) At the time of making application, the applicant shall file with,  
33 and have approved by, the Attorney General a bond in which the applicant shall  
34 be the principal in the sum of ten thousand dollars (\$10,000), with one (1) or  
35 more sureties whose liability in the aggregate as sureties will at least equal

1 that sum.

2 (d) The bond shall run to the Attorney General for the use of the state  
3 and to any person, including a charitable organization, who may have a cause  
4 of action against the principal of the bond for any deceptive trade practice,  
5 malfeasance or misfeasance of the principal or any professional solicitor  
6 employed by him in the conduct of a solicitation. However, the aggregate  
7 liability of the surety to the state and to all such persons, including  
8 charitable organizations, shall, in no event, exceed the sum of the bond.

9 (e) Registration, when effected, shall be for a period of one (1) year  
10 and may be renewed upon the filing of the bond and fee prescribed herein for  
11 additional one-year periods.

12

13 17-34-105. Solicitors - Registration and renewal.

14 (a) Every professional solicitor must be employed in a principal-agent  
15 relationship by a professional fund raiser registered pursuant to this  
16 chapter, and shall, within seventy-two (72) hours after accepting such  
17 employment, register with the Attorney General.

18 (b) Application for registration shall be in writing under oath in the  
19 form prescribed by the Attorney General and shall be accompanied by a fee in  
20 the sum of ten dollars (\$10.00).

21 (c) When effected, the registration shall be for a period of one (1)  
22 year and may be renewed upon the payment of the fee prescribed in this section  
23 for additional one-year periods.

24

25 17-34-106. Nonresident fund raisers and solicitors - Service of

26 process. (a) Every nonresident professional fund raiser and professional  
27 solicitor shall file, with the Attorney General, in addition to the  
28 application for registration required by 17-34-104, an irrevocable written  
29 consent on behalf of himself and any nonresident charitable organization for  
30 which solicitations are to be made, that in suits, proceedings, and actions  
31 growing out of the violation of any provision of this chapter, or as a result  
32 of any activities conducted within this state, giving rise to a cause of  
33 action, service on the Attorney General, shall be as valid and binding as if  
34 the service had been made on the professional fund raiser, professional  
35 solicitor, or charitable organization.

1           (b) In case any process or pleading is served upon the Attorney  
2 General, it shall be in triplicate. One (1) copy shall be filed in the office  
3 of the Attorney General and the other copies immediately forwarded by the  
4 Attorney General by registered or certified mail to the principal office or  
5 place of business of the nonresident professional fund raiser, professional  
6 solicitor or charitable organization.

7           (c) Any service so had on the Attorney General shall be returnable in  
8 not less than thirty (30) days.

9

10           17-34-107. Documents.

11           (a) All contracts, scripts, pamphlets, handouts and other materials  
12 used by professional fund raisers and solicitors shall be in writing, and true  
13 and correct copies of all documents used in any promotion shall be kept on  
14 file in the offices of the professional fund raiser and in the offices of the  
15 charitable organization on whose behalf the promotion is conducted for a  
16 period of three (3) years from the date the solicitation of contributions for  
17 the promotion commences.

18           (b) The documents shall be available for inspection, examination and  
19 copying by the Attorney General and other authorized agencies during usual and  
20 customary business hours.

21

22           17-34-108. Disposition of fees.

23           All fees collected by the Attorney General under this chapter shall be  
24 deposited in the State Treasury, and the State Treasurer shall credit them, as  
25 general revenues, to the various funds in the respective amounts to each and  
26 to be used for the purposes as provided in the Revenue Stabilization Law,  
27 19-5-101 et seq.

28

29           17-34-109. City regulations.

30           Nothing contained in the provisions of §§4-28-401 - 4-28-408 or this  
31 chapter shall prohibit any city from enacting ordinances regulating a  
32 solicitation of contributions within the limits of the city, unless the  
33 charitable organization or professional fund raiser subject to the provisions  
34 of those sections complies with the filing, reporting, and registration  
35 requirements thereof.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35

17-34-110. Records.

(a) Each contract between a charitable organization and a professional fundraiser shall be in writing and shall be filed by the professional fundraiser with the Attorney General at least fifteen (15) days prior to the performance by the professional fundraiser of any material services pursuant to such contract. The contract shall contain such information as will enable the Attorney General to identify the services the professional fundraiser is to provide and the manner and amount of his compensation.

(b) Each contract between a charitable organization and a professional fundraiser shall require delivery of the gross collections of any promotion to the charitable organization or its designated representatives.

(c) (1) Every professional fund raiser subject to the provisions of this subchapter shall keep a full and true record of each promotion, including names and addresses of all persons making contributions and the amounts thereof, in such form as will enable the professional fund raiser accurately to provide the information required by this subchapter. Such information shall be maintained by the professional fundraiser for a minimum of three (3) years after completion of the promotion.

(2) All records required hereunder, both in the hands of a professional fund raiser or a charitable organization, shall be open to inspection, examination and copying during usual and customary business hours by the Attorney General or other authorized agencies.

(d) A professional fundraiser who at any time has custody of contributions from a promotion shall keep such monies in an account at a bank or other federally insured financial institutions. Such account shall be separate and segregated from the general operating account and all personal funds of the professional fundraiser.

17-34-111. Reports.

(a) For each promotion within sixty (60) days of the close of such promotion, and on the anniversary of the commencement of a promotion lasting more than one (1) year, every professional fund raiser subject to the provisions of this subchapter who has solicited and received contributions in excess of five hundred dollars (\$500) shall file the following information on

1 forms to be provided by the Attorney General:

2           (1) The gross amount of contributions pledged and the amount  
3 collected for each promotion undertaken by the professional fund raiser;

4           (2) The amount of contributions remitted or to be remitted to  
5 each charitable organization or purpose represented; and

6           (3) The aggregate amount retained by or paid to the professional  
7 fund raiser, including all overhead, expenses, commissions and any other  
8 amounts of whatever description."  
9

10           SECTION 2. Arkansas Code Annotated Title 4, Chapter 28, Subchapter 4 is  
11 amended to read as follows:

12           "SUBCHAPTER 4. - SOLICITATION OF CONTRIBUTIONS  
13

14           4-28-401. Definitions.

15           As used in this subchapter, unless the context otherwise requires:

16           (1) 'Person' means an individual, organization, group, association,  
17 partnership, corporation, or any combination of them;

18           (2) 'Charitable organization' means any benevolent, philanthropic,  
19 patriotic, or eleemosynary person or any other person not regulated by §§17-  
20 34-101 through 111, raising money on behalf of such an organization.

21           (3) 'Contribution' means the pledge or grant of any money or property  
22 of any kind or value;

23           (4) 'Promotion' means, for each charitable organization represented,  
24 each and every fundraising drive or campaign for which contributions are  
25 solicited;

26           (5) 'Solicitation' means each request for a contribution.  
27

28           4-28-402. Penalties.

29           (a) Any person conducting a solicitation in violation of the provisions  
30 of this subchapter or providing to the Attorney General false information  
31 pursuant to the provisions of this subchapter shall be guilty of a Class A  
32 misdemeanor.

33           (b) In connection with any promotion by a charitable organization, any  
34 person employing any device, scheme, or artifice to defraud or obtaining money  
35 or property by means of any false pretense, misrepresentation, or promise

1 which the actor does not intend to perform, shall be guilty of a Class D  
2 felony.

3

4 4-28-403. Injunctions.

5 Upon complaint of any person, or other information coming to the  
6 attention of the prosecuting attorney or Attorney General, the prosecuting  
7 attorney or Attorney General may institute an action in the proper court to  
8 enjoin a solicitation of contributions which would violate any provisions of  
9 this chapter.

10

11 4-28-404. Prerequisite filings.

12 (a) (1) No charitable organization, in or out of state, shall solicit  
13 contributions from persons in this state by any means whatsoever until the  
14 charitable organization has registered, provided certain information  
15 concerning the solicitation as required by this subchapter on forms to be  
16 provided by the Attorney General and has filed the information with the  
17 Attorney General.

18 (2) The information so filed shall be available to the general  
19 public as a matter of public record, except and to the extent such records  
20 would otherwise be exempt from disclosure under the Arkansas Freedom of  
21 Information Act.

22 (b) The forms containing such information shall be sworn to and shall  
23 include, but not be limited to:

24 (1) The identity of the charitable organization by or for whom  
25 the solicitation is to be conducted;

26 (2) The address of the charitable organization;

27 (3) The purpose for each promotion for which the contributions  
28 solicited are to be used;

29 (4) The individual or officer who will have custody of the  
30 contributions;

31 (5) The individuals responsible for the distribution of the  
32 contributions;

33 (6) The period of time during which such promotion is to be  
34 conducted;

35 (7) A description of the method or methods of solicitation in

1 such detail as may from time to time be determined by the Attorney General;

2 (8) Whether the promotion is to be conducted by voluntary unpaid  
3 solicitors, by paid solicitors, or both;

4 (9) If in whole or in part by paid solicitors, the name and  
5 address of each professional fund-raiser supplying the solicitors, the basis  
6 of payment, and the nature of the arrangement; and

7 (10) A copy of the appropriate Internal Revenue Service Tax  
8 Exempt Status Form.

9

10 4-28-405. Reciprocal agreements with other states regarding required  
11 information.

12 (a) The Attorney General may enter into reciprocal agreements with a  
13 like authority of any other state or states for the purpose of exchanging  
14 information made available to the Attorney General under this subchapter.

15 (b) Pursuant to such agreements, the Attorney General may accept  
16 information filed by a charitable organization with another state in lieu of  
17 the information required to be filed by a charitable organization in  
18 accordance with the provisions of 4-28-404 if the information is substantially  
19 similar to the information required to be filed under 4-28-404.

20

21 4-28-406. Reports.

22 (a) On or before March 31 of each year, every charitable organization  
23 subject to the provisions of this subchapter which has received contributions  
24 in excess of ten thousand dollars (\$10,000) during the previous calendar year  
25 shall file the following information on forms to be provided by the Attorney  
26 General:

27 (1) The gross amount of the contributions pledged or collected;

28 (2) The amount allocated and dedicated to the charitable purpose  
29 represented for each promotion;

30 (3) The aggregate amount paid and to be paid for the expense of  
31 the promotion including overhead; and

32 (4) The aggregate amount paid to and to be paid to professional  
33 fund-raisers and solicitors.

34 (b) A charitable organization which maintains its books on other than a  
35 calendar year basis may, upon application to the Attorney General, be



1 permitted to file its report within ninety (90) days after the close of its  
2 fiscal year.

3 (c) In addition, the Attorney General may require that within ninety  
4 (90) days after the close of any special period of solicitation, the  
5 charitable organization conducting the solicitation shall file a special  
6 report of the information specified in this section for the special period of  
7 solicitation.

8

9 4-28-407. Records.

10 (a) Every charitable organization subject to the provisions of this  
11 subchapter shall keep a full and true record in such form as will enable the  
12 charitable organization accurately to provide the information required by this  
13 subchapter.

14 (b) All records required hereunder shall be open to inspection,  
15 examination and copying at all times by the Attorney General or other  
16 authorized agencies.

17

18 4-28-408. Exemptions.

19 (a) This subchapter shall not apply to any promotion by the members of  
20 a charitable organization where the contributions are solicited solely from  
21 persons who are members thereof at the time of the promotion nor shall this  
22 subchapter apply to promotions made solely for church, missionary, or  
23 religious purposes.

24 (b) The following organizations shall not be subject to §4-28-404 or  
25 §4-28-406, but shall keep full and accurate records in such form as will  
26 enable the organization to provide to the Attorney General, upon request, the  
27 information specified in §4-28-406(a) for each promotion conducted. Each such  
28 organization shall submit such information as the Attorney General may require  
29 to substantiate an exemption under this section:

30 (1) Any duly organized religious corporation, institution or society;

31 (2) Any parent-teacher association or educational institution, the  
32 curricula of which in whole or in part are registered or approved by any state  
33 or the United States either directly or by acceptance of accreditation by an  
34 accrediting body;

35 (3) Any civic organization, including any local service club, veteran's

1 post, fraternal society, volunteer fire or rescue group or local civic league  
2 not organized for profit;

3 (4) Any nonprofit hospital licensed by this state or in any other  
4 state;

5 (5) Any governmental unit or instrumentality of any state or the United  
6 States; or

7 (6) Any broadcast media owned or operated by an educational institution  
8 or governmental entity, or any entity organized solely for the support of such  
9 broadcast media.

10 (c) This subchapter shall not apply to any charitable organization  
11 which does not intend to solicit and receive, and does not actually receive,  
12 contributions in excess of ten thousand dollars (\$10,000) during a calendar  
13 year if all of its functions, including its fund-raising functions, are  
14 carried on by persons who are unpaid for their services, and provided that no  
15 part of its assets or income inures to the benefit of or is paid to any  
16 officer or member.

17

18 4-28-409. Nonresident organizations - Service of process.

19 (a) A nonresident charitable organization desiring to solicit funds  
20 within the State of Arkansas shall file with the information required in  
21 4-28-404 an irrevocable written consent that in suits, proceedings, and  
22 actions growing out of the violation of any provision of this subchapter, or  
23 as a result of any activities conducted within this state giving rise to a  
24 cause of action, service on the Attorney General shall be as valid and binding  
25 as if due service had been made on the said charitable organization.

26 (b) In case any process or pleadings are served upon the Attorney  
27 General, they shall be in duplicate, one (1) copy of which shall be filed in  
28 the office of the Attorney General, and the other immediately forwarded by the  
29 Attorney General by registered or certified mail to the principal office or  
30 place of business of the nonresident charitable organization. Any service so  
31 had on the Attorney General shall be returnable in not less than thirty (30)  
32 days.

33

34 4-28-410. City ordinances provisionally authorized.

35 Nothing contained in the provisions of this subchapter shall prohibit

1 any city in the State of Arkansas from enacting ordinances regulating a  
2 solicitation of contributions within the limits of the city, unless the  
3 charitable organization subject to the provisions of this subchapter complies  
4 with the filing, reporting, and registration requirements thereof."  
5

6 SECTION 3. Arkansas Code Title 4, Chapter 88 is amended to read as  
7 follows:  
8

9 "CHAPTER 88 - DECEPTIVE TRADE PRACTICES  
10

11 4-88-101. Applicability of chapter.

12 This chapter does not apply to:

13 (1) Advertising or practices which are subject to and which comply with  
14 any rule, order, or statute administered by the Federal Trade Commission;

15 (2) Broadcasters, printers, publishers, and other persons engaging in  
16 the dissemination of information who do not have actual knowledge of the  
17 intent, design, purpose, or deceptive nature of the advertising or practice;

18 (3) Actions or transactions permitted under laws administered by the  
19 Insurance Commissioner, Arkansas Securities Commissioner, Arkansas Public  
20 Service Commission, Arkansas Transportation Commission, Bank Commissioner, or  
21 other regulatory body or officer acting under statutory authority of this  
22 state or the United States, unless a director of these divisions specifically  
23 requests the Attorney General to implement the powers of this chapter.  
24

25 4-88-102. Definitions.

26 As used in this subchapter:

27 (1) 'Charitable organization' means any benevolent,  
28 philanthropic, patriotic, civic, or eleemosynary person;

29 (2) 'Contribution' means the promise or grant of any money or  
30 property of any kind or value;

31 (3) 'Person' means an individual, organization, group,  
32 association, partnership, corporation, or any combination of them;

33 (4) 'Promotion' means, for each charitable organization  
34 represented, each and every fundraising drive or campaign for which  
35 contributions are solicited. Similar or identical promotions on behalf of

1 different charitable organizations constitute separate and distinct  
2 promotions;

3 (5) 'Solicitation' means each request for a contribution.

4  
5 4-88-103. Penalties.

6 Any person who knowingly and willfully commits an unlawful practice  
7 under this chapter shall be guilty of a Class A misdemeanor.

8  
9 4-88-104. Injunctions.

10 In addition to the criminal penalty imposed hereunder, the Attorney  
11 General of this state shall have authority, acting through the Consumer  
12 Counsel, to file a petition in a chancery court designated in §4-88-111, for  
13 civil enforcement of the provisions of this chapter by seeking an injunction  
14 prohibiting any person from engaging in any deceptive or unlawful practice  
15 prohibited by this chapter.

16  
17 4-88-105. Consumer Protection Division.

18 (a) There is created within the Office of the Attorney General a  
19 Consumer Protection Division.

20 (b) The director of this division shall be known as the Consumer  
21 Counsel of Arkansas and shall be appointed by the Attorney General who may  
22 also appoint such assistants, investigators, and professional and clerical  
23 staff as are necessary for the efficient operation of the Consumer Protection  
24 Division.

25 (c) The Consumer Protection Division shall represent and protect the  
26 state, its subdivisions, the legitimate business community, and the general  
27 public as consumers.

28 (d) The Consumer Protection Division shall have the following  
29 functions, powers, and duties:

30 (1) To serve as a central coordinating agency and clearinghouse  
31 for receiving complaints of illegal, fraudulent, or deceptive practices;

32 (2) To assist, advise, and cooperate with federal, state, and  
33 local agencies and officials to protect and promote the interests of the  
34 consumer public;

35 (3) To conduct investigations, research, studies, and analyses of

1 matters, to issue reports, and take appropriate action affecting the interests  
2 of consumers, which may include the referral of complaints to state and local  
3 departments or agencies charged with enforcement of consumer laws, or to  
4 private organizations and agencies; however, the division may retain  
5 jurisdiction over such matters until resolved;

6 (4) To promote consumer education and to undertake activities to  
7 encourage business and industry to maintain high standards of honesty, fair  
8 business practices, and public responsibility in the production,  
9 advertisement, and sale of consumer goods and services, encouraging and  
10 supporting activities directed toward these objectives by the Better Business  
11 Bureau, consumer organizations, and other associations of like nature;

12 (5) To investigate violations of laws enacted and rules and  
13 regulations promulgated for the purpose of consumer protection, and to study  
14 the operation of such laws, rules, and regulations and to recommend to the  
15 General Assembly needed changes in law in the consumer's interest;

16 (6) To enforce the provisions of this chapter and to perform such  
17 other functions as may be incidental to the powers and duties set forth in  
18 this chapter.

19 (e) The expenses of the Consumer Protection Division shall be paid from  
20 funds provided for that purpose by law including, without limiting the  
21 generality of the foregoing, funds made available by the state or by the  
22 United States, or by political subdivisions or agencies thereof.

23

24 4-88-106. Consumer Advisory Board.

25 (a) There may be a Consumer Advisory Board appointed by the Attorney  
26 General.

27 (b)(1) If the Attorney General appoints such a board, it shall consist  
28 of eleven (11) members serving terms of two (2) years.

29 (2) The membership of the board shall be fairly representative  
30 of consumers, manufacturers, the Better Business Bureau, labor organizations,  
31 retailers, agriculture, and trade and professional associations.

32 (3) Each member shall serve without pay, but may be reimbursed  
33 for necessary expenses incurred while attending meetings and while in the  
34 discharge of his responsibilities.

35 (c) The chairman of the board shall be elected by the members.

1 (d) The board may assist and advise the Consumer Counsel with respect  
2 to:

- 3 (1) Policy matters relating to consumer interests;
- 4 (2) Improvement in the effectiveness of state consumer programs  
5 and operations;
- 6 (3) Needed changes in law to improve consumer protection in  
7 Arkansas.

8  
9 4-88-107. Deceptive trade practices generally.

10 (a) Deceptive trade practices made unlawful and prohibited by this  
11 chapter include, but are not limited to, the following:

- 12 (1) Knowingly making a false representation as to the  
13 characteristics, ingredients, uses, benefits, alterations, source,  
14 sponsorship, approval, or certification of goods or services, or as to whether  
15 goods are original or new, or of a particular standard, quality, grade, style,  
16 or model;
- 17 (2) Disparaging the goods, services, or business of another by  
18 false or misleading representation of fact;
- 19 (3) Advertising goods or services with intent not to sell them as  
20 advertised;
- 21 (4) Refusal of a retailer to deliver to the customer purchasing  
22 any electronic or mechanical apparatus the record of warranty and statement of  
23 service availability which the manufacturer includes in the original carton or  
24 container of the product or the refusal to make available, on request,  
25 information relating thereto;
- 26 (5) The employment of bait and switch advertising, consisting of  
27 an attractive but insincere offer to sell a product or service which the  
28 seller in truth does not intend or desire to sell, evidenced by refusal to  
29 show or disparagement of the advertised product, requirement of tie-in sale or  
30 other undisclosed conditions precedent to the purchase, demonstrating a  
31 defective product, or other acts demonstrating an intent not to sell the  
32 advertised product or services;
- 33 (6) Knowingly failing to identify flood, water, fire, or  
34 accidentally damaged goods as to such damages;
- 35 (7) Making a false representation that contributions solicited

1 for charitable purposes shall be spent in a specific manner or for specified  
2 purposes.

3 (b) The deceptive trade practices listed in this section are in  
4 addition to and do not limit the types of unfair trade practices actionable at  
5 common law or under other statutes of this state.

6  
7 4-88-108. Concealment, suppression, or omission of material facts.

8 The act, use, or employment by any person of any deception, fraud, or  
9 false pretense, or the concealment, suppression, or omission of any material  
10 fact with intent that others rely upon the concealment, suppression, or  
11 omission, in connection with the sale or advertisement of any goods or  
12 services is declared to be an unlawful practice.

13

14 4-88-109. Pyramiding devices.

15 (a) Every person who contrives, prepares, sets up, proposes, or  
16 operates any pyramiding device shall be guilty of an unlawful practice.

17 (b)(1) As used in this section, a pyramiding device shall mean any  
18 scheme whereby a participant pays valuable consideration for the chance to  
19 receive compensation primarily from introducing one or more additional persons  
20 into participation in the scheme or for the chance to receive compensation  
21 when a person introduced by the participant introduces a new participant.

22 (2) 'Compensation,' as used in this section, does not mean or  
23 include payment based upon sales made to persons who are not participants in  
24 the scheme and who are not purchasing in order to participate in the scheme.

25

26 4-88-110. Solicitations for charitable organizations.

27 (a) It is an unlawful practice for any person to solicit or request  
28 contributions or to sell goods, tickets of admission, advertising, or any  
29 other thing of value or offer to do the same when any part of the proceeds is  
30 pledged to be given to a charitable organization or solicited for a charitable  
31 purpose unless:

32 (1) Prior to accepting funds, the person discloses to each party  
33 solicited and every purchaser prior to accepting funds, the identity of the  
34 person responsible for soliciting the funds and whether any compensation is  
35 received for these services; and

1                   (2) Upon request by a solicited party, the person truthfully  
2 discloses the percentage of funds raised which is being paid to the solicitor  
3 and what percentage will be applied to the charitable purpose.     (b) It is  
4 an unlawful practice for any person to solicit contributions of anything of  
5 value or to sell or offer to sell tickets of admission, advertising, or any  
6 other tangible thing of value upon the representation, direct or by  
7 implication, that any part of the funds or other items received shall be given  
8 or contributed to any charitable organization when the organization has not  
9 agreed or consented in writing to the use of its name prior to the promotion  
10 and solicitation.

11                   (c) It is an unlawful practice for any person to sell or offer to sell  
12 passes or tickets of admission when a greater number of tickets will be  
13 offered for sale than the capacity of the facility for the number of shows  
14 contracted to be performed without disclosing, orally and in writing, prior to  
15 receipt of payment for the passes or tickets, the total seating capacity, the  
16 total number of seats for which tickets or passes will be sold, and the total  
17 number of persons expected to attend the production or event.

18                   (d) The provisions of this section shall not apply to any bona fide  
19 full-time employee of the charitable organization, or to any person who donates  
20 or gives all of the gross proceeds from sales or all contributions to the  
21 organizations for which the funds or things of value were solicited. However,  
22 this exemption shall not apply to any person who directly or indirectly  
23 receives commission as compensation for services in relation to fund-raising  
24 activities performed for the charitable organization.

25

26                   4-88-111. Investigations - Procedure - Confidential information.

27                   (a) When the Attorney General determines that an investigation should  
28 be made as to whether a person has engaged in, is engaging in, or shows  
29 evidence of intent to engage in any practice declared to be unlawful by this  
30 chapter, when he receives a request for enforcement proceedings from a  
31 consumer or labor organization, better business bureau, chamber of commerce,  
32 or any state agency, or when he receives a written complaint from a consumer  
33 of a practice declared to be unlawful under this chapter, he may:

34                   (1) Require that person to file a statement or report in writing  
35 as to the facts and circumstances concerning the matter, together with such



1 other data as may be reasonably related thereto;

2           (2) Examine under oath, or take the deposition of any person in  
3 connection with the matter;

4           (3) Examine any merchandise, or sample thereof, sales tickets, or  
5 other records relating thereto.

6           (b) Unless otherwise ordered by a court for good cause shown, no  
7 statement or documentary material produced pursuant to a demand under this  
8 section shall be produced for inspection or copying by, nor shall the contents  
9 thereof be disclosed to, any person other than the authorized employee of the  
10 Attorney General without the consent of the person who produced the material.

11           (c) The Attorney General or any attorney designated by him may use the  
12 documentary material or copies thereof in the enforcement of this chapter by  
13 presentation before any court, provided that any such material which contains  
14 trade secrets shall not be presented except with the approval of the court in  
15 which the action is pending after adequate notice to the person furnishing  
16 such material. However, when material containing trade secrets is presented  
17 with court approval, the material and the evidence pertaining thereto shall be  
18 held in camera and shall not be part of the court record or trial transcript.

19

20           4-88-112. Failure to cooperate in investigations - Proceedings.

21           (a) In the event any person fails or refuses to file a statement,  
22 appear, or produce records as required by §4-88-110, the Attorney General,  
23 acting through the Consumer Counsel, may file, in the chancery court of the  
24 county in which the person resides or transacts business or of the judicial  
25 district in which the State Capitol is located, a petition for an order of  
26 such court for the civil enforcement of such section.

27           (b) Upon the filing of the petition and service upon the person, the  
28 court shall have jurisdiction to hear and determine the matter so presented  
29 and to enter such order, including temporary injunctions, as may be required  
30 to effectuate this chapter.

31           (c) Willful concealment, destruction, alteration, or falsification of  
32 any documentary material which would be subject to subpoena by the court or  
33 the disobedience of any order of the court is declared to be unlawful and  
34 shall be punished as contempt of court.

35           (d) Any final order shall be subject to appeal to the Supreme Court of

1 Arkansas.

2

3 4-88-113. Civil enforcement and remedies - Suspension or forfeiture of  
4 charter, franchise, etc.

5 (a) In any proceeding for civil enforcement of provisions of this  
6 chapter, prohibiting unlawful practices as defined in this chapter, the court  
7 may make such orders or judgments as may be necessary to:

8 (1) Prevent the use or employment by such person of any  
9 prohibited practices; or

10 (2) Restore to any purchaser who has suffered any ascertainable  
11 loss by reason of the use or employment of the prohibited practices any moneys  
12 or real or personal property, which may have been acquired by means of any  
13 practice declared to be unlawful by this chapter, together with other damages  
14 sustained; or

15 (3) Assess penalties to be paid to the state not to exceed ten  
16 thousand dollars (\$10,000) per violation against persons found to have  
17 violated this chapter. Each promotion in violation of this subchapter shall  
18 constitute a separate violation.

19 (b)(1) Upon petition of the Attorney General, the court may order the  
20 suspension or forfeiture of franchise, corporate charter, or other licenses or  
21 permits or authorization to do business in this state .

22 (2) As compensation for his services in this behalf, the Attorney  
23 General shall be entitled to his expenses incurred in the investigation and  
24 prosecution of suits, to be paid by the defendant when judgment is rendered  
25 for the state, to be taxed as costs by the court hearing the cause.

26 (c) Any person who violates the terms of an injunction issued under  
27 this chapter shall forfeit and pay to the state a civil penalty of not more  
28 than ten thousand dollars (\$10,000) for any single action  
29 brought by the Attorney General."

30

31 SECTION 4. All provisions of this act of a general and permanent  
32 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas  
33 Code Revision Commission shall incorporate the same in the Code.

34

35 SECTION 5. If any provision of this act or the application thereof to

1 any person or circumstance is held invalid, such invalidity shall not affect  
2 other provisions or applications of the act which can be given effect without  
3 the invalid provision or application, and to this end the provisions of this  
4 act are declared to be severable.

5

6 SECTION 6. All laws and parts of laws in conflict with this act are  
7 hereby repealed.

8

9

*/s/Hopkins*

10

11

APPROVED: 4/10/91

12

13

14

15

16

17