

1 **State of Arkansas**  
2 **79th General Assembly**  
3 **Regular Session, 1993**  
4 **By: Senator Hardin**

# A Bill

**ACT 139 OF 1993**  
**SENATE BILL 14**

## For An Act To Be Entitled

8 "AN ACT TO AMEND ARKANSAS CODE TITLE 4, CHAPTER 95,  
9 SUBCHAPTER 1 PERTAINING TO THE MAIL AND TELEPHONE CONSUMER  
10 PRODUCT PROMOTION FAIR PRACTICES ACT; TO AMEND ARKANSAS  
11 CODE § 4-95-102 DEFINING PRODUCT PROMOTER; TO AMEND  
12 ARKANSAS CODE § 4-95-103 DEFINING PENALTIES; TO AMEND  
13 ARKANSAS CODE § 4-95-104 CONCERNING VIOLATIONS AS BEING  
14 DECEPTIVE TRADE PRACTICES; TO AMEND ARKANSAS CODE § 4-95-  
15 105 CONCERNING PRIZES AND AWARDS; TO AMEND ARKANSAS CODE §  
16 4-95-107 REGARDING PRE-EXISTING BUSINESS RELATIONSHIPS;  
17 AND FOR OTHER PURPOSES."

## Subtitle

19 **"AN ACT TO AMEND THE MAIL AND TELEPHONE**  
20 **CONSUMER PRODUCT PROMOTION FAIR PRACTICES ACT."**

21  
22  
23 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:**

24  
25 **SECTION 1. Arkansas Code § 4-95-102 (4) is hereby amended to read as follows:**

26 **"(4) \_Product promoter\_ means any person who individually or through an agent and by**  
27 **means of a written notice sent through the mail or by telephone:**

28 **(a) offers a gift, prize or award with the intent to sell, lease, or rent any**  
29 **consumer product; or**

30 **(b) solicits to sell, lease, or rent a consumer product, in which the consumer**  
31 **product and all the material terms of the transaction, including the price, handling, shipping,**  
32 **delivery or any other fee is not fully described and which requests the consumer contact the**  
33 **seller to complete the transaction; or**

34 **(c) offers by gift, prize or award any consumer product in which all material**  
35 **terms regarding the requirements of receiving such gift, prize or award are not fully described.**

36 **(d) The term \_product promoter\_ does not include any activities of nonprofit**

1 or charitable organizations exempt from federal income taxation under section 501(c)(3) of  
2 the United States Internal Revenue Code, 26 U.S.C. 501(c)3)."

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4 SECTION 2. Arkansas Code § 4-95-102 is hereby amended to add subsection (5) and  
5 (6) as follows:

6 "(5) Person means any individual, organization, group, association, partnership,  
7 corporation, or any combination of them.

8 (6) Pay-per-call means telecommunications services which permit simultaneous  
9 calling by a large number of callers to a single telephone number and for which the calling  
10 party is assessed, by virtue of completing the call, a charge that is not dependent on the  
11 existence of a pre-subscription relationship and for which the caller pays a per-call or per-time  
12 interval charge that is greater than, or in addition to, the charge for transmission of the call."

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14 SECTION 3. Arkansas Code §4-95-103 is hereby amended to read as follows:

15 "Any person who knowingly commits a practice as defined unlawful in this chapter shall  
16 be guilty of a Class B misdemeanor and, upon conviction in the circuit court of any county in  
17 this state in which any portion of the unlawful practice occurred, shall be subject to  
18 punishment accordingly. *If the amount in question solicited exceeds two hundred dollars*  
19 *(\$200), the offense shall constitute a Class D felony."*

20

21 SECTION 4. Arkansas Code § 4-95-104 is hereby amended to read as follows:

22 "In addition to the criminal penalty imposed hereunder, the division shall have  
23 authority to file a petition in a chancery court of Pulaski County for civil enforcement of the  
24 provisions of this chapter by seeking an injunction prohibiting any person, firm, partnership,  
25 corporation, or any other entity from engaging in any unlawful practice . Violation of any of the  
26 provisions of this Act shall constitute an unfair or deceptive act or practice as defined by the  
27 Deceptive Trade Practices Act, A.C.A. § 4-88-101 et seq. All remedies, penalties, and authority  
28 granted to the Attorney General under the Deceptive Trade Practice Act shall be available to  
29 him for the enforcement of this Act."

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31 SECTION 5. Arkansas Code § 4-95-105 (b) is hereby amended to read as follows:

32 "(b) It shall be an unlawful practice under this chapter for any person to offer a gift,  
33 prize or award by means of written notice sent through the mail or by telephone with the intent  
34 to sell, lease, or rent a consumer product, or to initiate the sale, lease, or rental of a consumer  
35 productwhen, at the time of such offer, the consumer product and all the material terms of the

1 **transaction, including the price, handling, shipping, delivery, or any other fee is not fully**  
2 **described unless done so in compliance with this chapter.**

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4 **SECTION 6. Arkansas Code § 4-95-105 is hereby amended to add subsection (c) as**  
5 **follows:**

6 **"(c) It shall be an unlawful practice for any person to offer a gift, prize, or award by**  
7 **means of written notice sent through the mail or by telephone with the intent to receive a**  
8 **payment of any money when, at the time of such offer, all of the material terms of the**  
9 **transaction, including handling, shipping, delivery, or any other fee is not fully described and:**

10 **(1) which requests the consumer to further the transaction by calling a 900 number or**  
11 **pay per call; or**

12 **2) which requests the consumer to send payment to claim the prize."**

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14 **SECTION 7. Arkansas Code § 4-95-107 (2) is hereby amended to read as follows:**

15 **"(2) When the business establishment making the solicitation has made a related prior**  
16 **sale to the consumer or has a clear, continuing business relationship with the consumer,**  
17 **provided that the relationship resulted in the consumer becoming aware of the full name,**  
18 **business address and phone number of the establishment; or"**

19

20 **SECTION 8. All provisions of this act of a general and permanent nature are**  
21 **amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision**  
22 **Commission shall incorporate the same in the Code.**

23

24 **SECTION 9. If any provision of this act or the application thereof to any person or**  
25 **circumstance is held invalid, such invalidity shall not affect other provisions or applications of**  
26 **the act which can be given effect without the invalid provision or application, and to this end**  
27 **the provisions of this act are declared to be severable.**

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29 **SECTION 10. All laws and parts of laws in conflict with this act are hereby repealed.**

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31 */s/Senator Hardin*

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33 **APPROVED: 2/16/93**

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