

1 **State of Arkansas**
2 **80th General Assembly**
3 **Regular Session, 1995**
4 **By: Representative Booker**

A Bill

ACT 447 OF 1995
HOUSE BILL 1424

For An Act To Be Entitled

8 "AN ACT TO AMEND VARIOUS SECTIONS OF TITLE 4, CHAPTER 89,
9 ARKANSAS CODE ANNOTATED, REGARDING HOME SOLICITATION
10 SALES; AND FOR OTHER PURPOSES."

Subtitle

13 "TO AMEND VARIOUS SECTIONS OF TITLE 4,
14 CHAPTER 89, ARKANSAS CODE ANNOTATED,
15 REGARDING HOME SOLICITATION SALES."

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

19 SECTION 1. Arkansas Code Annotated § 4-89-102 is amended to read as
20 follows:

21 "4-89-102. Definitions.

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

23 (1) Home solicitation sale means a cash sale or a consumer credit
24 sale of goods, other than insurance, or services in which the seller or a
25 person acting for him engages in a personal solicitation of the sale at other
26 than appropriate trade premises in an amount more than twenty-five dollars
27 (\$25.00);

28 (A) This definition also includes all telephone sales in which
29 the seller has initiated contact regardless of his location and the consumer's
30 agreement to purchase is made at the consumer's home;

31 (B) It does not include a sale made pursuant to prior
32 negotiations between the parties at a business establishment, at a fixed
33 location, where goods or services are offered or exhibited for sale, or a sale
34 in which the buyer has initiated the contact and specifically requested the
35 seller to visit his home for the purpose of repairing or performing
36 maintenance upon the buyer's personal property. If, in the course of such a

1 visit, the seller sells the buyer the right to receive additional services or
2 goods other than replacement parts necessarily used in performing the
3 maintenance or in making the repairs, the sale of those additional goods or
4 services would not fall within this exclusion;

5 (C) The term _home solicitation sale_ does not include a
6 transaction involving an order for goods to be delivered at one time if:

7 (i) The order is evidenced only by a sales ticket or
8 invoice which the buyer is not required to sign;

9 (ii) The buyer makes no payment prior to delivery of the
10 goods;

11 (iii) The goods are not delivered within three (3) business
12 days of the date of the order;

13 (iv) The buyer may refuse to accept the goods when they are
14 delivered without incurring any obligation to pay for them or the expenses
15 associated with the transaction, including mailing or shipping charges, or the
16 buyer may, upon inspecting the goods after delivery, return them within three
17 (3) business days to the seller and receive a full refund for any amounts the
18 buyer has paid including mailing and shipping charges; and

19 (v) The buyer's right to cancel the order, refuse delivery,
20 or return the goods without obligation or charge is clearly and unmistakably
21 set forth on the face or reverse side of the sales ticket or invoice;

22 (2) _Appropriate trade premises_ means premises at which either
23 the owner or seller normally carries on a business or where goods are normally
24 offered or exposed for sale in the course of business carried on at those
25 premises;

26 (3) _Goods_ means tangible chattels bought for use primarily for
27 personal, family, or household purposes, including certificates or coupons
28 exchangeable for such goods, and including goods which, at the time of the
29 sale or subsequently, are to be so affixed to real property as to become a
30 part of such real property whether or not severable therefrom;

31 (4) _Services_ means work, labor, or other services furnished
32 primarily for personal, family, or household purposes, including but not
33 limited to services in connection with the repair, alteration, or improvement
34 of residential premises, courses of instruction or training regardless of the
35 purpose for which they are taken, and services furnished in connection with

1 the sale or repair of goods, but does not include the services of attorneys,
2 real estate brokers and salesmen, securities dealers or investment counselors,
3 physicians, optometrists, or dentists;

4 (5) Seller means any person, partnership, corporation, or
5 association engaged in the door-to-door or telephone sale of consumer goods or
6 services;

7 (6) Deceptive trade practices means the following acts of a
8 seller in connection with any home solicitation sale; the following acts
9 constitute a violation of this chapter:

10 (A) Failure to comply with any requirement of §§ 4-89-107
11 and 4-89-109; or

12 (B) Misrepresenting in any manner the consumer's right to
13 cancel; or

14 (C) Representing, directly or indirectly, that the seller
15 is primarily conducting or participating in any survey, quiz, or contest or is
16 primarily engaged in any activity other than soliciting business or
17 misrepresenting in any manner the purpose of the call or solicitation; or

18 (D) Representing, directly or indirectly, that any offer to
19 sell goods or services is being made only to specially selected persons, or
20 misrepresenting in any manner the persons or class of persons afforded the
21 opportunity of purchasing the seller's goods or services; or

22 (E) Representing, directly or indirectly, that any sale or
23 service is being offered for any organization, individual, or firm other than
24 the one engaged in soliciting business or misrepresenting in any manner the
25 identity of the solicitor or his firm and of the business in which they are
26 engaged; or

27 (F) Representing, directly or indirectly, that any
28 merchandise or service is free or is provided as a gift or without cost or
29 charge in connection with the purchase of goods or services, unless the price
30 of the goods or services required to be purchased in order to obtain the free
31 merchandise or gift is disclosed; or

32 (G) Representing, directly or indirectly, that any price is
33 a special or reduced price unless it constitutes a significant reduction from
34 the seller's established selling price at which the goods or services have
35 been sold in substantial quantities in the recent and regular course of trade

1 or misrepresenting in any manner the savings which the consumer will receive;
2 or

3 (H) Failing to disclose clearly and unqualifiedly at the
4 initial contact or solicitation and at all subsequent contacts or
5 solicitations, whether by telephone, written communication, or
6 person-to-person, that the purpose of the contact or solicitation is to sell
7 goods or services; or

8 (I) Failing to disclose clearly and conspicuously, both
9 orally and in writing in the contract:

10 (i) The total cash price;

11 (ii) The down payment;

12 (iii) The unpaid balance of the cash price;

13 (iv) The number, amount, and due dates of payments
14 necessary to pay the unpaid balance in full; and

15 (v) An accurate description of the goods or services
16 purchased."

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18 SECTION 2. Arkansas Code Annotated § 4-89-106 is amended to read as
19 follows:

20 "4-89-106. Enforcement of chapter.

21 (a) Any home solicitation sale conducted in violation of this chapter
22 shall constitute an unfair and deceptive act or practice as defined by the
23 Deceptive Trade Practices Act, Arkansas Code Annotated § 4-88-101 et seq. All
24 remedies, penalties, and authority granted to the Attorney General under the
25 Deceptive Trade Practices Act shall be available to the Attorney General for
26 the enforcement of this chapter.

27 (b) The prosecuting attorneys of the various districts and counties of
28 this state shall also have full authority to enforce the provisions of this
29 chapter.

30 (c) Nothing in the provisions of this chapter shall prohibit the bringing
31 of a civil action against a violator of the chapter by an individual harmed by
32 a deceptive trade practice."

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34 SECTION 3. All provisions of this act of a general and permanent nature
35 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code

1 Revision Commission shall incorporate the same in the Code.

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

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9 SECTION 5. All laws and parts of laws in conflict with this act are
10 hereby repealed.

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12 APPROVED: 2-27-95

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