

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

# A Bill

**ACT 587 OF 1993**  
**SENATE BILL 13**

## For An Act To Be Entitled

8 "AN ACT TO AMEND ARKANSAS CODE TITLE 4, CHAPTER 88  
9 CONCERNING DECEPTIVE TRADE PRACTICES; TO AMEND ARKANSAS  
10 CODE § 4-88-102 DEFINING GOODS AND SERVICES; TO AMEND  
11 ARKANSAS CODE § 4-88-107 TO INCLUDE *UNCONSCIONABLE*  
12 BUSINESS PRACTICES; TO AMEND ARKANSAS CODE § 4-88-113  
13 DEFINING REMEDIES; TO AMEND ARKANSAS CODE TITLE 4, CHAPTER  
14 88, SUBCHAPTER 1 TO ADD PROVISIONS TO ALLOW FOR AN  
15 ASSURANCE OF VOLUNTARY COMPLIANCE; AND FOR OTHER  
16 PURPOSES."

## Subtitle

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19  
20 "AN ACT TO AMEND THE DECEPTIVE TRADE PRACTICES ACT."

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

23  
24 SECTION 1. Arkansas Code § 4-88-102 is hereby amended to add  
25 subsections (6) and (7) as follow:

26 "(6) *\_Goods\_* means any tangible property, coupons, or certificates,  
27 whether bought or leased.

28 "(7) *\_Services\_* means work, labor, or other things purchased that do not  
29 have physical characteristics."

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31 SECTION 2. Arkansas Code § 4-88-107 is amended to read as follows:

32 "4-88-107. *Deceptive and unconscionable trade practices generally:*

33 (a) *Deceptive and unconscionable trade practices made unlawful and*  
34 *prohibited by this chapter include, but are not limited to, the following:*

35 (1) *Knowingly making a false representation as to the*  
36 *characteristics, ingredients, uses, benefits, alterations, source,*

1 sponsorship, approval, or certification of goods or services, or as to whether  
2 goods are original or new, or of a particular standard, quality, grade, style,  
3 or model;

4           (2) Disparaging the goods, services, or business of another by  
5 false or misleading representation of fact;

6           (3) Advertising the goods or services with the intent not to sell  
7 them as advertised;

8           (4) Refusal of a retailer to deliver to the customer purchasing  
9 any electronic or mechanical apparatus the record of warranty and statement of  
10 service availability which the manufacturer includes in the original carton or  
11 container of the product or the refusal to make available, on request,  
12 information relating thereto;

13           (5) The employment of bait-and-switch advertising, consisting of  
14 an attractive but insincere offer to sell a product or service which the  
15 seller in truth does not intend or desire to sell, evidenced by refusal to  
16 show or disparagement of the advertised product, requirement of tie-in sale or  
17 other undisclosed conditions precedent to the purchase, demonstrating a  
18 defective product, or other acts demonstrating an intent not to sell the  
19 advertised product or services;

20           (6) Knowingly failing to identify flood, water, fire, or  
21 accidentally damaged goods as to such damages;

22           (7) Making a false representation that contributions solicited  
23 for charitable purposes shall be spent in a specific manner or for specified  
24 purposes;

25           (8) Knowingly taking advantage of a consumer who is reasonably  
26 unable to protect his or her interest because of physical infirmity,  
27 ignorance, illiteracy, inability to understand the language of the agreement  
28 or similar factor;

29           (9) Engaging in any other unconscionable, false or deceptive act  
30 or practice in business, commerce or trade.

31           (b) The deceptive and unconscionable trade practices listed in this  
32 section are in addition to and do not limit the type of unfair trade practices  
33 actionable at common law or under other statutes of this state."

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35           SECTION 3. Arkansas Code § 4-88-111 is hereby amended to add subsection

1 (d) as follows:

2 " (d) No statements, documents, or other information maintained or  
3 produced as a result of an ongoing investigation of possible violations of  
4 this chapter shall be disclosed to any person other than those persons  
5 specifically authorized by the Attorney General to receive such information."  
6

7 SECTION 4. Arkansas Code § 4-88-113 is hereby amended to read as  
8 follows:

9 "4-88-113. Civil enforcement and remedies - Suspension or forfeiture of  
10 charter, franchise, etc.

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

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

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

21 (3) Assess penalties to be paid to the state not to exceed ten thousand  
22 dollars (\$10,000) per violation against persons found to have violated this  
23 chapter.

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

27 (2) As compensation for his services in this behalf, the Attorney  
28 General shall be entitled to his expenses incurred in the investigation and  
29 prosecution of suits, to be paid by the defendant when judgment is rendered  
30 for the state, to be taxed as attorney's fees and costs by the court hearing  
31 the cause.

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

1           (d) Every person who directly or indirectly controls another person who  
2 is in violations of or liable under this chapter, and every partner, officer,  
3 or director of another person who is in violation of or liable under this  
4 chapter shall be jointly and severally liable for any penalties assessed and  
5 any monetary judgements awarded in any proceeding for civil enforcement of the  
6 provisions of the chapter; provided that the persons to be held jointly and  
7 severally liable knew or reasonably should have known of the existence of the  
8 facts by reason of which the violation or liability exists. There is  
9 contribution as in cases of contract among the several persons so liable."

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11           SECTION 5. Subchapter 1 of Chapter 88 of Title 4 of the Arkansas Code  
12 is hereby amended by inserting an additional section at the end thereof to  
13 read as follows:

14           "4-88-114. Voluntary compliance--Chancery Court approval.

15           (1) In the administration of this chapter, the Attorney General may  
16 accept an assurance of voluntary compliance with respect to any method, act or  
17 practice deemed to be violative of the provisions of this chapter from any  
18 person who has engaged or was about to engage in such method, act, or  
19 practice. Any such assurance shall be in writing and may be enforced by  
20 petitioning the chancery court of the county in which the alleged violator  
21 resides or had his principal place of business or the chancery court of  
22 Pulaski County."

23           (2) Such assurance of voluntary compliance shall not be considered an  
24 admission of violation for any purpose.

25           (3) The assurance of voluntary compliance shall provide for the  
26 discontinuance by the person entering into the same of any method, act, or  
27 practice alleged to be a violation of this chapter, and it may include a  
28 stipulation for the payment by such person of reasonable expenses,  
29 investigative costs, and attorney's fees incurred by the Attorney General.  
30 The assurance may also include: a stipulation for payment to consumers of  
31 actual damages or for restitution of money, property, or other things received  
32 from consumers in connection with a violation of the provisions of this  
33 chapter; and a stipulation for specific performance.

34           (4) A finding by a chancery court that a violation of such assurance of  
35 voluntary compliance has occurred shall prima facie establish that the person

1 subject thereto knows, or in the exercise of due care should know, that he has  
2 in the past violated or is violating the provisions of this chapter.

3       (5) *The assurance of voluntary compliance shall not be admissible into*  
4 *evidence in any separate criminal proceeding within the meaning of this act."*

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6       SECTION 6. All provisions of this act of a general and permanent nature  
7 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code  
8 Revision Commission shall incorporate the same in the Code.

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

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16       SECTION 8. All laws and parts of laws in conflict with this act are  
17 hereby repealed.

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*/s/Senator Hardin*

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APPROVED: 03/19/93

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***As Engrossed: 1/13/93 3/11/93***

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