

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

# A Bill

**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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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:  
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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*

1 characteristics, ingredients, uses, benefits, alterations, source,  
2 sponsorship, approval, or certification of goods or services, or as to whether  
3 goods are original or new, or of a particular standard, quality, grade, style,  
4 or model;

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

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

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

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

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

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

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

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

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

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1 SECTION 3. Arkansas Code § 4-88-111 is hereby amended to add subsection  
2 (d) as follows:

3 "(d) No statements, documents, or other information maintained or  
4 produced as a result of an ongoing investigation of possible violations of  
5 this chapter shall be disclosed to any person other than those persons  
6 specifically authorized by the Attorney General to receive such information."  
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8 SECTION 4. Arkansas Code § 4-88-113 is hereby amended to read as  
9 follows:

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

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

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

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

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

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

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

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

1 Attorney General.

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

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

15           "4-88-114. Voluntary compliance--Chancery Court approval.

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

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

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

35           (4) *A finding by a chancery court that a violation of such assurance of*

1 voluntary compliance has occurred shall prima facie establish that the person  
2 subject thereto knows, or in the exercise of due care should know, that he has  
3 in the past violated or is violating the provisions of this chapter.

4 (5) *The assurance of voluntary compliance shall not be admissible into*  
5 *evidence in any separate criminal proceeding within the meaning of this act."*  
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7 SECTION 6. All provisions of this act of a general and permanent nature  
8 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code  
9 Revision Commission shall incorporate the same in the Code.

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

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

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*/s/Senator Hardin*

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

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