

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

A Bill

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

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
26 follows:

27 "(4) Product promoter means any person who individually or through an
28 agent and by means of a written notice sent through the mail or by telephone:

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

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

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

4 (d) The term product promoter does not include any activities
5 of nonprofit or charitable organizations exempt from federal income taxation
6 under section 501(c)(3) of the United States Internal Revenue Code, 26 U.S.C.
7 501(c)3)."

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

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

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

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

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

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

32 "In addition to the criminal penalty imposed hereunder, the division
33 shall have authority to file a petition in a chancery court of Pulaski County
34 for civil enforcement of the provisions of this chapter by seeking an
35 injunction prohibiting any person, firm, partnership, corporation, or any

1 other entity from engaging in any unlawful practice . Violation of any of the
2 provisions of this Act shall constitute an unfair or deceptive act or practice
3 as defined by the Deceptive Trade Practices Act, A.C.A. § 4-88-101 et seq.
4 All remedies, penalties, and authority granted to the Attorney General under
5 the Deceptive Trade Practice Act shall be available to him for the enforcement
6 of this Act."

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

10 "(b) It shall be an unlawful practice under this chapter for any person
11 to offer a gift, prize or award by means of written notice sent through the
12 mail or by telephone with the intent to sell, lease, or rent a consumer
13 product, or to initiate the sale, lease, or rental of a consumer productwhen,
14 at the time of such offer, the consumer product and all the material terms of
15 the transaction, including the price, handling, shipping, delivery, or any
16 other fee is not fully describedunless done so in compliance with this
17 chapter.

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

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

- 26 (1) which requests the consumer to further the transaction by calling a
27 900 number or pay per call; or
- 28 2) which requests the consumer to send payment to claim the prize."

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

32 "(2) When the business establishment making the solicitation has made a
33 related prior sale to the consumer or has a clear, continuing business
34 relationshipwith the consumer, provided that the relationship resulted in the
35 consumer becoming aware of the full name, business address and phone number of

1 the establishment; or"

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

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

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

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16 /s/Senator Hardin

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