

Stricken language would be deleted from present law. Underlined language would be added to present law.

1 State of Arkansas  
2 81st General Assembly  
3 Regular Session, 1997  
4  
5 By: Representative Vess

# A Bill

HOUSE BILL 1756

## For An Act To Be Entitled

9 "AN ACT TO AMEND VARIOUS SECTIONS OF THE ARKANSAS CODE  
10 PERTAINING TO SALES TO THE PUBLIC THROUGH TELEPHONE  
11 SOLICITATION; AND FOR OTHER PURPOSES."

## Subtitle

14 "TO AMEND VARIOUS SECTIONS OF THE  
15 ARKANSAS CODE PERTAINING TO SALES TO THE  
16 PUBLIC THROUGH TELEPHONE SOLICITATION."

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

20 SECTION 1. Arkansas Code 4-89-102(1)(A) is amended to read as follows:

21 "(1)(A) Home solicitation sale means a cash sale or a consumer credit  
22 sale of goods, other than insurance, or services in which the seller or a  
23 person acting for him engages in a personal solicitation of the sale at other  
24 than appropriate trade premises in an amount more than twenty-five dollars  
25 (\$25.00). The term does not include a telephone sale in which the consumer  
26 has the right to review and return or cancel unused and undamaged goods or  
27 services for at least seven (7) days after receipt of goods or services and  
28 the right to a full refund within thirty (30) days of return or cancellation  
29 and the telephone sale complies with 16 CFR 310."

31 SECTION 2. Arkansas Code 4-95-107 is amended to read as follows:

32 "4-95-107. Exemptions.

33 This chapter shall not apply to a consumer product transaction:

34 (1) That has been made in accordance with prior negotiations in  
35 the course of a visit by the consumer to a merchant operating a  
36 business establishment that has a fixed permanent location and where

1 the consumer products are displayed or offered for sale, lease, or  
 2 rent on a continuing basis;

3 (2) When the business establishment making the solicitation has  
 4 made a related prior sale to the consumer or has a clear, continuing  
 5 business relationship with the consumer, provided that the  
 6 relationship resulted in the consumer's becoming aware of the full  
 7 name, business address, and telephone number of the establishment; or

8 (3) When the consumer obtains a consumer product pursuant to an  
 9 examination of a television, radio, or print advertisement or a sample  
 10 brochure, catalog, or other mailed material of the product promoter  
 11 which contains:

12 (A) The name, address, and telephone number of the product  
 13 promoter;

14 (B) A full description of the consumer product along with a  
 15 list of the price or fee being requested, including any handling,  
 16 shipping, or delivery charge; and

17 (C) Any limitations or restrictions that apply to the offer-;

18 (4) Which concerns the sale of books, recordings, videos, multimedia or  
 19 similar products when the sale is regulated by 16 CFR 425; or the sale is a  
 20 single sale of merchandise or a continuity plan or series arrangement and the  
 21 consumer has given prior express request or consent to receive such items, has  
 22 the right to review such items for at least seven (7) days and the right to  
 23 return or cancel unused and undamaged goods or services and to receive a full  
 24 refund in thirty (30) days, there is no minimum purchase requirement, and a  
 25 telephone sale complies with 16 CFR 310."

26

27 SECTION 3. Arkansas Code 4-99-103(8)(C) is amended to read as follows:

28 "(C) For purposes of this chapter, telephonic seller or  
 29 seller does not include any of the following:

30 (i) A person offering or selling a security, and who is  
 31 registered pursuant to § 23-42-301 et seq.;

32 (ii) A person offering or selling insurance, and who is  
 33 licensed pursuant to § 23-64-201 et seq.;

34 (iii) A person primarily soliciting the sale of a newspaper of  
 35 general circulation, a magazine, or membership in a book or record  
 36 club whose program operates in conformity with § 4-89-101 et seq. and

1 § 4-95-101 et seq.;

2 (iv) A person soliciting business from prospective purchasers  
3 who have previously purchased from the business enterprise for which  
4 the person is calling;

5 (v)(a) A person soliciting without the intent to complete, and  
6 who does not complete, the sales presentation during the telephone  
7 solicitation but completes the sales presentation at a later  
8 face-to-face meeting between the solicitor and the prospective  
9 purchaser.

10 (b) However, if a seller, directly following a telephone  
11 solicitation, causes an individual whose primary purpose it is to go  
12 to the prospective purchaser to collect the payment or deliver any  
13 item purchased, this exemption does not apply;

14 (vi) Any supervised financial institution or parent,  
15 subsidiary, or affiliate thereof. As used in this subdivision  
16 (8)(C)(vi), supervised financial institution means any commercial  
17 bank, trust company, savings and loan association, credit union,  
18 industrial loan company, personal property broker, consumer finance  
19 lender, commercial finance lender, or insurer, provided that the  
20 institution is subject to the supervision of an official or agency of  
21 this state or of the United States;

22 (vii) Any burial association operating pursuant to the  
23 authority of § 23-78-101 et seq.;

24 (viii) A person, or an affiliate of a person, whose business is  
25 regulated by the Arkansas Public Service Commission;

26 (ix) An issuer or a subsidiary of an issuer that has a class of  
27 securities which is subject to, and which is either registered or  
28 exempt from registration to, § 23-42-401 et seq.;

29 (x) A person soliciting a transaction regulated by the  
30 Commodity Futures Trading Commission if the person is registered or  
31 temporarily licensed for this activity with the Commodity Futures  
32 Trading Commission under the Commodity Exchange Act, 7 U.S.C. § 1 et  
33 seq., and the registration or license has not expired or been  
34 suspended or revoked; ~~or~~

35 (xi) A person soliciting a transaction directed to a purchaser  
36 holding a permit pursuant to the Arkansas Gross Receipts Act, §

1 26-52-101 et seq., and in which the solicitation deals with goods of a  
 2 type that are subject to resale by the purchaser-;

3 (xii) A person who has been operating for at least one year a retail  
 4 business establishment under the same name as that used in connection with  
 5 telemarketing, and either products are displayed and offered for sale or  
 6 services are offered for sale and provided at the business establishment; or

7 (xiii) A person soliciting the sale of food or produce if the  
 8 solicitation neither intends to result in, or actually results in, a sale  
 9 which costs the purchaser in excess of five hundred dollars (\$500.00)."

10

11 SECTION 4. Arkansas Code 4-102-104(b)(1) is amended to read as follows:

12 "(b)(1) This chapter does not apply to sponsors of prize promotions  
 13 where all prizes are awarded absolutely for free and there is no opportunity  
 14 for the payment of money from the person to the sponsor or any agent of the  
 15 sponsor. This does not include the legitimate offer or sale of goods and  
 16 services when there is clear and conspicuous disclosure that no purchase is  
 17 required for a consumer to enter or win a prize promotion."

18

19 SECTION 5. Arkansas Code 4-102-104(c) is amended to read as follows:

20 "(c) Other Exemptions. This chapter does not apply to  
 21 solicitations or representations in connection with:

22 (1) The sale or purchase of books, recordings, video cassettes,  
 23 multimedia products, periodicals, and similar goods through:

24 (A) A membership group or club which is regulated by the  
 25 Federal Trade Commission pursuant to 16 C.F.R. Part 425.1 concerning  
 26 the use of negative option plans by sellers in commerce; or

27 (B)(i) The sale or purchase of such goods through a  
 28 contractual plan or arrangement such as a continuity plan, subscription  
 29 arrangement, or a single sale of merchandise or purchase series arrangement  
 30 under which the seller ships such goods to a consumer who has consented in  
 31 advance to receive the goods and, after the receipt of the goods, is  
 32 given the opportunity to examine the goods and to receive a full  
 33 refund of charges for the goods upon return of the goods undamaged  
 34 within a reasonable period of time.

35 (ii) Provided, that the return and refund privilege shall be  
 36 clearly and conspicuously disclosed to the consumer in the original

1 contact with the consumer, whether oral or written.

2 (iii) If the consumer elects to return the product for a  
 3 refund, the seller shall process the refund within thirty (30) days  
 4 after the receipt of the returned merchandise by the consumer.

5 (iv) In addition to the return and refund privilege, the  
 6 consumer may cancel the plan, arrangement, subscription, or purchase  
 7 series at any time by notifying the seller. After the seller receives  
 8 the cancellation notice, any further products, not already in transit,  
 9 sent to the consumer shall be considered a gift to the consumer which  
 10 the consumer may keep without further obligation, and for which gift  
 11 the seller shall not bill the consumer; or

12 (2) Sales by a Catalogue Seller. For purposes of this section,  
 13 catalogue seller shall mean any entity and its subsidiaries, or  
 14 person, at least fifty percent (50%) of whose annual revenues are  
 15 derived from the sale of products sold in connection with the  
 16 distribution of catalogues of at least twenty-four (24) pages, which  
 17 contain written descriptions or illustrations and sale prices for each  
 18 item of merchandise and which are distributed in more than one (1)  
 19 state with a total annual distribution of at least two hundred fifty  
 20 thousand (250,000)."

21

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

25

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

31

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

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