

Stricken language would be deleted from and underlined language would be added to law as it existed prior to the 82nd General Assembly.

1 State of Arkansas
2 82nd General Assembly
3 Regular Session, 1999
4

As Engrossed: S4/2/99
A Bill

Act 1406 of 1999
HOUSE BILL 2015

5 By: Representative Broadway
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For An Act To Be Entitled

9 "AN ACT TO DISCOURAGE THE DECEPTIVE SALE OR PROMOTION
10 OF HEALTH-RELATED CASH DISCOUNT CARDS; AND FOR OTHER
11 PURPOSES. "

Subtitle

14 "TO DISCOURAGE THE DECEPTIVE SALE OR
15 PROMOTION OF HEALTH-RELATED CASH
16 DISCOUNT CARDS. "

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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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21 SECTION 1. It shall be unlawful and a violation of this act for any
22 person to sell, market, promote, advertise or otherwise distribute any card or
23 other purchasing mechanism or device, which is not insurance, that purports to
24 offer discounts or access to discounts from health care providers in health-
25 related purchases where:

26 (1) Such card or other purchasing mechanism or device does not
27 expressly provide in bold and prominent type that the discounts are not
28 insurance;

29 (2) Such discounts are not specifically authorized by an individual and
30 separate contract with each health care provider listed in conjunction with
31 the card or other purchasing mechanism or device; or

32 (3) The discounts or access to discounts offered or the range of
33 discounts or access to the range of discounts offered are misleading,
34 deceptive or fraudulent, regardless of the literal wording used.
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36 SECTION 2. (a) Any person, firm, private corporation, or municipal or

1 other public corporation, or trade association, may maintain an action to
2 enjoin a continuance of any act or acts in violation of this act and for the
3 recovery of damages.

4 (b) Any person subject to liability under this section shall be deemed,
5 as a matter of law, to have purposefully availed himself of the privileges of
6 conducting activities within Arkansas, sufficient to subject the person to the
7 personal jurisdiction of the circuit or chancery court hearing an action
8 brought pursuant to this chapter.

9 (c) An action for violation of this section may be brought:

10 (1) In the county where the plaintiff resides;

11 (2) In the county where the plaintiff conducts business; or

12 (3) In the county where the card or other purchasing mechanism or
13 device was sold, marketed, promoted, advertised or otherwise distributed.

14 (d)(1) If, in such action, the court shall find that the defendant is
15 violating or has violated any of the provisions of this act, it shall enjoin
16 the defendant from a continuance thereof.

17 (2) It shall not be necessary, except to recover for actual
18 damages under subsection (d)(3))(B), that actual damages to the plaintiff be
19 alleged or proved.

20 (3) In addition to injunctive relief, the plaintiff in the action
21 shall be entitled to recover from the defendant:

22 (A) One hundred dollars (\$100) per card or other purchasing
23 mechanism or device sold, marketed, promoted, advertised or otherwise
24 distributed within the State of Arkansas, or ten thousand dollars (\$10,000),
25 whichever is greater;

26 (B) Three (3) times the amount of the actual damages, if
27 any, sustained;

28 (C) Reasonable attorney's fees;

29 (D) Costs; and

30 (E) Any other relief which the court deems proper.

31 (e) All actions under this section shall be commenced within two (2)
32 years after the date on which the violation of this act occurred or within two
33 (2) years after the person bringing the action discovered, or in the exercise
34 of reasonable diligence, should have discovered, the occurrence of the
35 violation of this act. The period of limitation provided in this section may
36 be extended for a period of one hundred eighty (180) days if the person

1 bringing the action proves by a preponderance of the evidence that the failure
2 to timely commence the action was caused by the defendants engaging in conduct
3 solely calculated to induce the plaintiff to refrain from or postpone the
4 commencement of the action.

5 (f) Any defendant in an action brought under the provisions of this act
6 may be required to testify under the provisions of Arkansas Code 16-43-211 and
7 16-43-701. In addition, the books and records of any such defendant may be
8 brought into court and introduced, by reference, into evidence.

9 (g) The remedies prescribed in this section are cumulative and in
10 addition to the remedies prescribed in Arkansas Code 4-88-101 through 4-99-305
11 and any other applicable criminal, civil or administrative penalties.

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13 SECTION 3. Any person who sells, markets, promotes, advertises, or
14 otherwise distributes any card or other purchasing mechanism or device, which
15 is not insurance, that purports to offer discounts from health care providers
16 in health-related purchases in Arkansas shall designate an agent, who is a
17 resident of Arkansas, for service of process and register such agent with the
18 Secretary of State.

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20 SECTION 4. Nothing in this act shall be construed to apply to eye or
21 vision care services, glasses or contact lenses provided by an optometrist or
22 ophthalmologist.

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

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

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34 SECTION 7. All laws and parts of laws in conflict with this act are
35 hereby repealed.

36 /s/ Broadwa

APPROVED: 4/13/1999y