

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas  
2 83rd General Assembly  
3 Regular Session, 2001

# A Bill

SENATE BILL 851

4  
5 By: Senator Fitch  
6  
7

## For An Act To Be Entitled

8  
9 AN ACT TO CREATE THE ARKANSAS RETAIL PRICE COMPARISON  
10 ACT; AND FOR OTHER PURPOSES.  
11

## Subtitle

12  
13 AN ACT TO CREATE THE ARKANSAS RETAIL  
14 PRICE COMPARISON ACT.  
15  
16

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

19 SECTION 1. This act shall be known and cited as the "Arkansas Retail  
20 Price Comparison Act."  
21

22 SECTION 2. Definitions.

23 For purposes of this act:

24 (1) "Clearly and conspicuously" means that the statement,  
25 representation, or term being disclosed is:

26 (A) Reasonably understandable;

27 (B) In a size, color contrast, or audibility to be readily  
28 noticeable;

29 (C) Placed and presented as to be readily noticeable; and

30 (D) In close proximity to the information it modifies;

31 (2) "Comparable goods or services" means goods or services that are  
32 substantially similar in composition, style, design, model, kind, variety,  
33 service, or performance characteristics to the goods or services to which the  
34 goods or services are compared in any advertisement;

35 (3) "Comparative price" means the price or other description of value  
36 of goods or services to which a seller compares its current price in any

\*VJF705\*

022020011435.VJF705

1 advertisement;

2 (4) "List price" means a price given to a retailer by a manufacturer or  
3 other supplier as a suggested retail price for the goods or services and  
4 includes the manufacturer's suggested retail price;

5 (5) "Price comparison" means an express or implied comparison in any  
6 advertisement, whether or not expressed wholly or in part in dollars, cents,  
7 fractions, or percentages, of a seller's current price for goods or services  
8 with any other price or statement of value, whether or not the price is  
9 actually stated in the advertisement;

10 (6)(A) "Seller" means any person who offers any goods or services for  
11 sale or lease at any location and who disseminates advertisements for that  
12 product in Arkansas.

13 (B) "Seller" may include any officer, agent, employee, sales  
14 person, or representative of the seller, and any advertising agency employed  
15 by a seller; and

16 (7) "Trade area" means the geographic area in Arkansas where the  
17 seller's outlets are located or where the seller's advertisements are  
18 disseminated.

19

20 SECTION 3. Identifying the basis of a price comparison.

21 (a)(1) It is a deceptive act or practice for a seller to make a price  
22 comparison or claim a savings as to any goods or services offered for sale  
23 unless the seller clearly and conspicuously discloses the basis for or source  
24 of the price comparison or savings claim.

25 (2) A seller may make a price comparison or claim a savings  
26 without the required disclosure if the price comparison or savings claim is  
27 based on the seller's own former price as provided for in section 4 of this  
28 act.

29 (b) The terms "regular", "regularly", "formerly", "originally", "was",  
30 or words of similar meaning may be used by the seller to identify the seller's  
31 own former price.

32

33 SECTION 4. Comparison to seller's own former price.

34 It is a deceptive act or practice for a seller to compare the seller's  
35 current price with the seller's former price for any goods or services unless  
36 the former price is a price at which:

1       (1) A substantial number of sales were made by the seller during the  
2 three (3) months immediately preceding the price comparison;

3       (2) A substantial number of sales were made by the seller and the  
4 seller clearly and conspicuously discloses the dates during which a  
5 substantial number of sales were made by the seller at the former price; or

6       (3) The seller offered the goods or services for a reasonably  
7 substantial period of time in the recent, regular course of its business,  
8 openly, actively, and in good faith, with an intent to sell the goods or  
9 services at that price.

10  
11       SECTION 5. Comparison to seller's future prices.

12       It is a deceptive act or practice for a seller to make an introductory  
13 offer or to compare its current price for goods or services with the price at  
14 which the goods or services will be offered in the future, unless the future  
15 price:

16       (1) Takes effect within a reasonable time after the introductory offer  
17 or price comparison is published; and

18       (2) Of the goods or services is, subsequent to the end of the  
19 introductory sale, properly established as the seller's regular and customary  
20 price.

21  
22       SECTION 6. Range of savings or price comparison claims.

23       (a) It is a deceptive act or practice for a seller to state or imply  
24 that any goods or services are being offered for sale or lease at a range of  
25 prices, or at a range of percentage or fractional discounts, unless the  
26 highest price or the lowest discount in the range is clearly and conspicuously  
27 disclosed in the advertisement and a reasonable number of the items in the  
28 advertisement are offered with the largest advertised discount or the lowest  
29 advertised price.

30       (b) If at least five percent (5%) of the items in the advertisement are  
31 offered with the largest advertised discount or the lowest advertised price, a  
32 rebuttable presumption exists that a reasonable number were offered with at  
33 least the largest advertised discount or the lowest advertised price.

34  
35       SECTION 7. Use of list price or similar comparisons.

36       It is a deceptive act or practice for a seller to make a price

1 comparison or to claim a savings, express or implied, from a list price or  
 2 term of similar meaning, unless the list price:

3 (1) Does not exceed the highest price at which substantial sales of the  
 4 goods or services have been made in the seller's trade area;

5 (2) Is the price at which the seller offered the goods or services for  
 6 a reasonably substantial period of time in the recent, regular course of its  
 7 business, openly, actively, and in good faith, with an intent to sell the  
 8 goods or services at that price;

9 (3) Does not exceed the highest price at which the product is offered  
 10 by a reasonable number of sellers in the seller's trade area for a reasonably  
 11 substantial period of time in the recent, regular course of business; or

12 (4) Does not exceed the seller's cost plus the percentage markup  
 13 regularly used by the seller in the actual sale of the goods or services or  
 14 goods or services of a similar class or kind, in the seller's recent, regular  
 15 course of business.

16  
 17 SECTION 8. Comparison to competitor's price.

18 It is a deceptive act or practice for a seller to compare the seller's  
 19 price with a price currently being offered by another seller for goods or  
 20 services unless the goods or services are comparable goods or services and the  
 21 comparative price is at or below the price at which the comparable goods or  
 22 services are currently being offered in the seller's trade area by a  
 23 reasonable number of other sellers in the same trade area, or another seller  
 24 in the seller's trade area, and that other seller is identified in the  
 25 seller's advertisement.

26  
 27 SECTION 9. Bargain offers based on the purchase of other goods or  
 28 services and use of the word "free".

29 (a) It is a deceptive act or practice to use the word "free", or words  
 30 of similar meaning, or to represent bargain offers, including "buy one - get  
 31 one free", "buy one - get one at half-price", "two for one", and "one cent  
 32 sale", when describing goods or services to be given to a customer who agrees  
 33 to purchase other goods or services, if the seller recovers, in whole or part,  
 34 the cost of the free or bargain goods or services by marking up the price of  
 35 the item which shall be purchased, by substituting an inferior item or  
 36 service, or otherwise.

1 (b) It is a deceptive act or practice to represent that other goods or  
2 services are being offered free or at a bargain price with the sale if the  
3 advertised goods or services can be purchased from the advertiser at a lesser  
4 price without the free or bargain goods or services, particularly if the goods  
5 or services are usually sold at a price arrived at through bargaining.

6  
7 SECTION 10. Use of sale terminology.

8 (a) It is a deceptive act or practice for a seller to use terms such as  
9 "sale", "sale prices", "now only \$\_\_\_", or other words and phrases that imply  
10 a price savings unless the price of the goods or services is reduced by a  
11 reasonable amount from the former price of the goods or services.

12 (b) If the seller reduces the price by five percent (5%) or more from  
13 the former price, a rebuttable presumption exists that the price reduction was  
14 of a reasonable amount.

15 (c) The term "sale" may be used in an advertisement where not all items  
16 are offered at a reduction from regular price if the items are clearly and  
17 conspicuously identified.

18  
19 SECTION 11. Violations and enforcement.

20 (a) Any act or practice which is deemed to be a deceptive act or  
21 practice in this act shall constitute an unfair and deceptive act or practice  
22 under § 4-88-107.

23 (b) All remedies, penalties and authority granted to the Attorney  
24 General under the Deceptive Trade Practices Act shall be available to the  
25 Attorney General for the enforcement of this act.

26 (c) Nothing in this section limits the rights or remedies which are  
27 otherwise available to any person under any other law.

28  
29  
30  
31  
32  
33  
34  
35  
36