

1 State of Arkansas
2 88th General Assembly
3 Regular Session, 2011
4

As Engrossed: S2/24/11
A Bill

SENATE BILL 164

5 By: Senator J. Hutchinson
6

7 **For An Act To Be Entitled**

8 AN ACT TO CLARIFY THAT RELIANCE IS NOT AN ELEMENT OF
9 PROOF IN DECEPTIVE AND UNCONSCIONABLE TRADE PRACTICES
10 ACTIONS; AND FOR OTHER PURPOSES.
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13 **Subtitle**

14 TO CLARIFY THAT RELIANCE IS NOT AN
15 ELEMENT OF PROOF IN DECEPTIVE AND
16 UNCONSCIONABLE TRADE PRACTICES ACTIONS.
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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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21 SECTION 1. Arkansas Code § 4-88-113 is amended to read as follows:

22 4-88-113. Civil enforcement and remedies – Suspension or forfeiture of
23 charter, franchise, etc.

24 (a) In any proceeding brought under subsection (f) of this section or
25 by the Attorney General for civil enforcement of the provisions of this
26 chapter, prohibiting unlawful practices as defined in this chapter, the
27 circuit court may make ~~such~~ orders or judgments as may be necessary to:

28 (1) Prevent the use or employment by ~~such~~ a person of any
29 prohibited practices;

30 (2)(A) Restore to ~~any~~ a purchaser who has suffered ~~any~~ an
31 ascertainable loss by reason of the use or employment of the prohibited
32 practices any moneys or real or personal property which may have been
33 acquired by means of any practice declared to be unlawful by this chapter,
34 together with other damages sustained.

35 (B) In determining the amount of restitution to be awarded
36 under this section, the court shall consider affidavits from nontestifying



1 purchasers, provided that:

2 (i) The affidavits are offered as evidence of a
3 material fact;

4 (ii) The affidavits are more probative on the point
5 for which they are offered than any other evidence which the Attorney General
6 or plaintiff can procure through reasonable efforts;

7 (iii) The interests of justice will be best served
8 by admission of the affidavits; and

9 (iv) The Attorney General or plaintiff makes the
10 names and addresses of the affiants available to the adverse party
11 sufficiently in advance to provide the adverse party with a fair opportunity
12 to communicate with them; and

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

16 (b) Upon petition of the Attorney General, the court may order the
17 suspension or forfeiture of franchises, corporate charters, or other licenses
18 or permits or authorization to do business in this state.

19 (c) ~~Any~~ a person who violates the terms of an injunction issued under
20 this chapter shall forfeit and pay to the state a civil penalty of not more
21 than ten thousand dollars (\$10,000) for any single action brought by a
22 plaintiff or the Attorney General.

23 (d)(1) ~~Every~~ a person who directly or indirectly controls another
24 person who is in violation of or liable under this chapter and every partner,
25 officer, or director of another person who is in violation of or liable under
26 this chapter shall be jointly and severally liable for any penalties assessed
27 and any monetary judgments awarded in any proceeding for civil enforcement of
28 the provisions of this chapter, provided that the persons to be held jointly
29 and severally liable knew or reasonably should have known of the existence of
30 the facts by reason of which the violation or liability exists.

31 (2) There is contribution as in cases of contract among the
32 several persons so liable.

33 (3) ~~Every~~ a person subject to liability under subdivision (d)(1)
34 of this section shall be deemed, as a matter of law, to have purposefully
35 availed himself or herself of the privileges of conducting activities within
36 Arkansas sufficient to subject the person to the personal jurisdiction of the

1 circuit court hearing an action brought pursuant to under this chapter.

2 (e) As compensation for his or her services under this chapter, the
3 Attorney General shall be entitled to ~~all expenses reasonably incurred~~
4 reasonably incurred expenses in the investigation and prosecution of suits,
5 including, but not limited to, expenses for expert witnesses, to be paid by
6 the defendant when judgment is rendered for the state, ~~and, in addition,~~ and
7 shall recover attorney's fees and costs.

8 (f) ~~Any~~ A person who suffers actual damage or injury as a result of
9 an offense or violation as defined in this chapter:

10 (1) ~~has~~ Has a cause of action to recover actual damages, if
11 appropriate, and reasonable attorney's fees; and

12 (2) Shall provide written notice to the Consumer Counsel within
13 the office of the Attorney General within thirty (30) days of filing suit
14 under this subchapter.

15 (g)(1) Except as provided in subdivision (g)(2) of this section, if a
16 product has no commercial value or benefit proof of reliance upon a deceptive
17 or unconscionable trade practice described in § 4-88-107 is not required to
18 obtain the relief authorized by this chapter.

19 (2) Subdivision (g)(1) of this section does not apply to a
20 person or product that is subject to regulation by or the approval of a
21 regulatory body of this state or the United States.

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24 /s/J. Hutchinson
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