

1 State of Arkansas

2 78th General Assembly

3 Regular Session, 1991

4 By: Representatives Horn and Whorton

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For An Act To Be Entitled

8 "AN ACT TO REGULATE THE OFFERING GIFTS OR PRIZES BY MAIL
9 OR TELEPHONE WHICH ARE INTENDED TO INDUCE THE CONSUMER TO
10 PURCHASE A CONSUMER PRODUCT WHERE THE TERMS OF THE
11 TRANSACTION ARE NOT FULLY DISCLOSED; TO REQUIRE CONTRACTS
12 FOR THESE CONSUMER PRODUCTS TO BE IN WRITING AND TO
13 CONTAIN DISCLOSURE STATEMENTS; TO DEFINE CERTAIN UNLAWFUL
14 PRACTICES; TO AUTHORIZE THE CONSUMER PROTECTION DIVISION
15 OF THE ATTORNEY GENERAL'S OFFICE TO ENFORCE THIS ACT; AND
16 FOR OTHER PURPOSES."

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

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21 SECTION 1. This act may be known and cited as the "Arkansas Mail and
22 Telephone Consumer Product Promotion Fair Practices Act".

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24 SECTION 2. As used in this act, unless the context otherwise requires:

25 (1) "Consumer product" means a good or service purchased, leased, or
26 rented primarily for personal, family, or household purposes, including a
27 course of instruction or training regardless of the purpose for which it is
28 taken;

29 (2) "Division" means the Consumer Protection Division of the Office of
30 the Attorney General as created under Arkansas Code § 4-88-104;

31 (3) "Gift or prize" means any premium, bonus, award or any other
32 similar language of inducement or incentive to purchase a consumer product;

33 (4) "Product promoter" means any person who, individually or through a
34 sales agent, salesman, or telemarketer, offers a gift or prize by means of
35 written notice sent through the mail or by telephone with the intent to sell,

1 lease, or rent a consumer product, or who initiates the sale, lease, or rental
2 of a consumer product, in which the consumer product and all the material
3 terms of the transaction, including the price and any fee for handling,
4 shipping, or delivery, are not fully described and which requests the consumer
5 contact the seller to initiate the transaction. The term does not include any
6 activities of nonprofit or charitable organizations exempt from federal income
7 taxation under Section 501(c)(3) of the United States Internal Revenue Code,
8 26 U.S.C. §501(c)(3);

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10 SECTION 3. (a) It shall be an unlawful practice under this act for any
11 product promoter to enforce or to attempt to enforce an agreement for a
12 consumer product not in compliance with the requirements of this act.

13 (b) It shall be an unlawful practice under this act for any person to
14 offer a gift or prize by means of written notice sent through the mail or by
15 telephone with the intent to sell, lease, or rent a consumer product, or to
16 initiate the sale, lease, or rental of a consumer product, in which the
17 consumer product and all the material terms of the transaction, including the
18 price and any fee for handling, shipping, or delivery, are not fully described
19 and which requests the consumer contact the seller to initiate the transaction
20 unless done so in compliance with this act.

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22 SECTION 4. (a) Any agreement by a consumer to obtain a consumer
23 product from a product promoter is not enforceable unless it is in writing, it
24 contains the signature of the consumer, and it contains the following
25 information:

26 (1) the name and address, and telephone number of the product
27 promoter;

28 (2) a list of the price or fee, including any handling, shipping,
29 delivery, or other charges, being requested from the consumer;

30 (3) the date of the transaction;

31 (4) a detailed description of the consumer product; and

32 (5) in a type size of a minimum of twelve (12) points, in a space
33 immediately preceding the space allotted for the consumer's signature, the
34 disclosure statement: "YOU ARE NOT OBLIGATED TO PAY ANY MONEY UNLESS YOU SIGN
35 THIS CONTRACT AND RETURN IT TO THE SELLER".

1 (b) If the consumer sends a payment to the product promoter in the form
2 of cash, check, money order, or other form of payment without having included
3 a signed copy of the agreement to obtain the consumer product, the consumer
4 may cancel the transaction by notifying the product promoter in writing by
5 certified mail with return receipt requested and returning the consumer
6 product to the product promoter in substantially the same condition as he or
7 she received the product. A product promoter who has received written notice
8 of cancellation from a consumer, within ten (10) business days of the receipt
9 of the notice, shall:

10 (1) refund all payments made, including any down payment made
11 under the agreement;

12 (2) return any good or product traded in to the product promoter
13 on account of or in contemplation of the agreement, in substantially the same
14 condition as when it was received by the product promoter; and

15 (3) take any action necessary or appropriate to terminate
16 promptly any security interest created in connection with the agreement.

17 (c) A consumer product transaction is considered to have taken place in
18 the State of Arkansas, regardless of the location of the product promoter,
19 when the consumer has received an offer of a gift or prize or an initiation of
20 a product transaction from the product promoter through the mail at an address
21 within the State or through a telephone contact at a site within the State.

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23 SECTION 5. This act shall not apply to a consumer product transaction:

24 (1) that has been made in accordance with prior negotiations in the
25 course of a visit by the consumer to a merchant operating a business
26 establishment that has a fixed permanent location and where the consumer
27 products are displayed or offered for sale, lease, or rent on a continuing
28 basis;

29 (2) when the business establishment making the offer or initiation has
30 had a prior transaction with the consumer or has clear, preexisting business
31 relationships with the consumer which result in the consumer becoming aware of
32 the full name, business address, and phone number of the business
33 establishment; or

34 (3) when the consumer obtains a consumer product pursuant to an
35 examination of a television, radio, or print advertisement or a sample

1 brochure, catalog, or other mailed material of the product promoter which
2 contains:

3 (A) the name, address and telephone number of the product
4 promoter;

5 (B) a full description of the consumer product along with a list
6 of the price or fee being requested, including any handling, shipping, or
7 delivery charge; and

8 (C) any limitations or restrictions that apply to the offer.

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10 SECTION 6. Any product promoter who knowingly and willfully commits an
11 unlawful practice as defined in this act shall be guilty of a Class B
12 misdemeanor and, upon conviction in the circuit court of any county in this
13 State in which any portion of the unlawful practice occurred, shall be subject
14 to punishment accordingly.

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16 SECTION 7. In addition to the criminal penalty imposed hereunder, the
17 Division shall have authority to file a petition in a chancery court of
18 Pulaski County for civil enforcement of the provisions of this act by seeking
19 an injunction prohibiting any person, firm, partnership, corporation, or any
20 other entity from engaging in any unlawful practice prohibited by this act.

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22 SECTION 8. Any agreement for sale, lease, or rent of a consumer product
23 by a product promoter in violation of this act is void and unenforceable. Any
24 waiver or attempt to waive any of the provisions of this act shall be void and
25 unenforceable.

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27 SECTION 9. All provisions of this act of general and permanent nature
28 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
29 Revision Commission shall incorporate the same in the Code.

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31 SECTION 10. If any provisions of this act or the application thereof to
32 any person or circumstance is held invalid, the invalidity shall not affect
33 other provisions or applications of the act which can be given effect without
34 the invalid provisions or application, and to this end the provisions of this
35 act are declared to be severable.

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2 SECTION 11. All other laws and parts of laws in conflict with this act
3 are hereby repealed.