

1 State of Arkansas
2 80th General Assembly
3 Regular Session, 1995
4 By: Representative Booker

A Bill

HOUSE BILL 1424

For An Act To Be Entitled

"AN ACT TO AMEND VARIOUS SECTIONS OF TITLE 4, CHAPTER 89,
ARKANSAS CODE ANNOTATED, REGARDING HOME SOLICITATION
SALES; AND FOR OTHER PURPOSES."

Subtitle

"TO AMEND VARIOUS SECTIONS OF TITLE 4,
CHAPTER 89, ARKANSAS CODE ANNOTATED,
REGARDING HOME SOLICITATION SALES."

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

SECTION 1. Arkansas Code Annotated § 4-89-102 is amended to read as follows:

"4-89-102. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) Home solicitation sale means a cash sale or a consumer credit sale of goods, other than insurance, or services in which the seller or a person acting for him engages in a personal solicitation of the sale at other than appropriate trade premises in an amount more than twenty-five dollars (\$25.00);

(A) This definition also includes all telephone sales in which the seller has initiated contact regardless of his location and the consumer's agreement to purchase is made at the consumer's home;

(B) It does not include a sale made pursuant to prior negotiations between the parties at a business establishment, at a fixed location, where goods or services are offered or exhibited for sale, or a sale in which the buyer has initiated the contact and specifically requested the seller to visit his home for the purpose of repairing or performing

1 maintenance upon the buyer's personal property. If, in the course of such a
 2 visit, the seller sells the buyer the right to receive additional services or
 3 goods other than replacement parts necessarily used in performing the
 4 maintenance or in making the repairs, the sale of those additional goods or
 5 services would not fall within this exclusion;

6 (C) The term home solicitation sale does not include a
 7 transaction involving an order for goods to be delivered at one time if:

8 (i) The order is evidenced only by a sales ticket or
 9 invoice which the buyer is not required to sign;

10 (ii) The buyer makes no payment prior to delivery of the
 11 goods;

12 (iii) The goods are not delivered within three (3)
 13 business days of the date of the order;

14 (iv) The buyer may refuse to accept the goods when they
 15 are delivered without incurring any obligation to pay for them or the
 16 expenses associated with the transaction, including mailing or shipping
 17 charges, or the buyer may, upon inspecting the goods after delivery, return
 18 them within three (3) business days to the seller and receive a full refund
 19 for any amounts the buyer has paid including mailing and shipping charges;
 20 and

21 (v) The buyer's right to cancel the order, refuse
 22 delivery, or return the goods without obligation or charge is clearly and
 23 unmistakably set forth on the face or reverse side of the sales ticket or
 24 invoice;

25 (2) Appropriate trade premises means premises at which either
 26 the owner or seller normally carries on a business or where goods are
 27 normally offered or exposed for sale in the course of business carried on at
 28 those premises;

29 (3) Goods means tangible chattels bought for use primarily for
 30 personal, family, or household purposes, including certificates or coupons
 31 exchangeable for such goods, and including goods which, at the time of the
 32 sale or subsequently, are to be so affixed to real property as to become a
 33 part of such real property whether or not severable therefrom;

34 (4) Services means work, labor, or other services furnished
 35 primarily for personal, family, or household purposes, including but not

1 limited to services in connection with the repair, alteration, or improvement
 2 of residential premises, courses of instruction or training regardless of the
 3 purpose for which they are taken, and services furnished in connection with
 4 the sale or repair of goods, but does not include the services of attorneys,
 5 real estate brokers and salesmen, securities dealers or investment
 6 counselors, physicians, optometrists, or dentists;

7 (5) Seller means any person, partnership, corporation, or
 8 association engaged in the door-to-door or telephone sale of consumer goods
 9 or services;

10 (6) Deceptive trade practices means the following acts of a
 11 seller in connection with any home solicitation sale; the following acts
 12 constitute a violation of this chapter:

13 (A) Failure to comply with any requirement of §§ 4-89-107
 14 and 4-89-109; or

15 (B) Misrepresenting in any manner the consumer's right to
 16 cancel; or

17 (C) Representing, directly or indirectly, that the seller
 18 is primarily conducting or participating in any survey, quiz, or contest or
 19 is primarily engaged in any activity other than soliciting business or
 20 misrepresenting in any manner the purpose of the call or solicitation; or

21 (D) Representing, directly or indirectly, that any offer
 22 to sell goods or services is being made only to specially selected persons,
 23 or misrepresenting in any manner the persons or class of persons afforded the
 24 opportunity of purchasing the seller's goods or services; or

25 (E) Representing, directly or indirectly, that any sale or
 26 service is being offered for any organization, individual, or firm other than
 27 the one engaged in soliciting business or misrepresenting in any manner the
 28 identity of the solicitor or his firm and of the business in which they are
 29 engaged; or

30 (F) Representing, directly or indirectly, that any
 31 merchandise or service is free or is provided as a gift or without cost or
 32 charge in connection with the purchase of goods or services, unless the price
 33 of the goods or services required to be purchased in order to obtain the free
 34 merchandise or gift is disclosed; or

35 (G) Representing, directly or indirectly, that any price

1 is a special or reduced price unless it constitutes a significant reduction
 2 from the seller's established selling price at which the goods or services
 3 have been sold in substantial quantities in the recent and regular course of
 4 trade or misrepresenting in any manner the savings which the consumer will
 5 receive; or

6 (H) Failing to disclose clearly and unqualifiedly at the
 7 initial contact or solicitation and at all subsequent contacts or
 8 solicitations, whether by telephone, written communication, or
 9 person-to-person, that the purpose of the contact or solicitation is to sell
 10 goods or services; or

11 (I) Failing to disclose clearly and conspicuously, both
 12 orally and in writing in the contract:

13 (i) The total cash price;

14 (ii) The down payment;

15 (iii) The unpaid balance of the cash price;

16 (iv) The number, amount, and due dates of payments
 17 necessary to pay the unpaid balance in full; and

18 (v) An accurate description of the goods or services
 19 purchased."

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21 SECTION 2. Arkansas Code Annotated § 4-89-106 is amended to read as
 22 follows:

23 "4-89-106. Enforcement of chapter.

24 (a) Any home solicitation sale conducted in violation of this chapter
 25 shall constitute an unfair and deceptive act or practice as defined by the
 26 Deceptive Trade Practices Act, Arkansas Code Annotated § 4-88-101 et seq.
 27 All remedies, penalties, and authority granted to the Attorney General under
 28 the Deceptive Trade Practices Act shall be available to the Attorney General
 29 for the enforcement of this chapter.

30 (b) The prosecuting attorneys of the various districts and counties of
 31 this state shall also have full authority to enforce the provisions of this
 32 chapter.

33 (c) Nothing in the provisions of this chapter shall prohibit the
 34 bringing of a civil action against a violator of the chapter by an individual
 35 harmed by a deceptive trade practice."

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SECTION 3. All provisions of this act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

SECTION 4. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

SECTION 5. All laws and parts of laws in conflict with this act are hereby repealed.

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