

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

A Bill

HOUSE BILL 1486

For An Act To Be Entitled

"AN ACT TO AMEND VARIOUS SECTIONS OF THE _DECEPTIVE TRADE
PRACTICES ACT, _ ARKANSAS CODE ANNOTATED §§ 4-88-101 ET
SEQ.; AND FOR OTHER PURPOSES."

Subtitle

"TO AMEND VARIOUS SECTIONS OF THE
DECEPTIVE TRADE PRACTICES ACT."

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

SECTION 1. Arkansas Code Annotated § 4-88-104 is amended to read as follows:

"4-88-104. Injunctions.

In addition to the criminal penalty imposed hereunder, the Attorney General of this state shall have authority, acting through the Consumer Counsel, to file an action in the court designated in § 4-88-112, for civil enforcement of the provisions of this chapter, including but not limited to the seeking of restitution and the seeking of an injunction prohibiting any person from engaging in any deceptive or unlawful practice prohibited by this chapter."

SECTION 2. Arkansas Code Annotated § 4-88-108 is amended to read as follows:

"4-88-108. Concealment, suppression, or omission of material facts.

When utilized in connection with the sale or advertisement of any goods, services, or charitable solicitation, the following shall be unlawful:

(1) The act, use, or employment by any person of any deception, fraud, or false pretense; or

1 (2) The concealment, suppression, or omission of any material fact
2 with intent that others rely upon the concealment, suppression, or omission."

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4 SECTION 3. Arkansas Code Annotated § 4-88-112 is amended to read as
5 follows:

6 "4-88-112. Failure to cooperate in investigations - Proceedings.

7 (a) In the event any person fails or refuses to file a statement,
8 appear, or produce records as required by § 4-88-111, the Attorney General,
9 acting through the Consumer Counsel, may file, in the circuit or chancery
10 court of the county in which the person resides or transacts business or of
11 the judicial district in which the State Capitol is located, a petition for
12 an order of such court for the civil enforcement of such section.

13 (b) Upon the filing of the petition and service upon the person, the
14 court shall have jurisdiction to hear and determine the matter so presented
15 and to enter such order, including temporary injunctions, as may be required
16 to effectuate this chapter.

17 (c) Willful concealment, destruction, alteration, or falsification of
18 any documentary material which would be subject to subpoena by the court or
19 the disobedience of any order of the court is declared to be unlawful and
20 shall be punished as contempt of court.

21 (d) Any final order shall be subject to appeal to the Supreme Court of
22 Arkansas."

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24 SECTION 4. Arkansas Code Annotated § 4-88-113 is amended to read as
25 follows:

26 "4-88-113. Civil enforcement and remedies - Suspension or forfeiture
27 of charter, franchise, etc.

28 (a) In any proceeding brought by the Attorney General for civil
29 enforcement of the provisions of this chapter, prohibiting unlawful practices
30 as defined in this chapter, the circuit or chancery court may make such
31 orders or judgments as may be necessary to:

32 (1) Prevent the use or employment by such person of any
33 prohibited practices.

34 (2)(A) Restore to any purchaser who has suffered any
35 ascertainable loss by reason of the use or employment of the prohibited

1 practices any moneys or real or personal property, which may have been
2 acquired by means of any practice declared to be unlawful by this chapter,
3 together with other damages sustained.

4 (B) In determining the amount of restitution to be awarded
5 under this section, the court shall consider affidavits from non-testifying
6 purchasers, provided that:

7 (i) the affidavits are offered as evidence of a
8 material fact;

9 (ii) the affidavits are more probative on the point
10 for which they are offered than any other evidence which the Attorney General
11 can procure through reasonable efforts;

12 (iii) the interests of justice will be best served
13 by admission of the affidavits; and

14 (iv) the Attorney General makes the names and
15 addresses of the affiants available to the adverse party sufficiently in
16 advance to provide the adverse party with a fair opportunity to communicate
17 with them.

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

21 (4) Upon petition of the Attorney General, the court may order
22 the suspension or forfeiture of franchises, corporate charters, or other
23 licenses or permits or authorization to do business in this state.

24 (b) As compensation for his services under this chapter, the Attorney
25 General shall be entitled to all expenses reasonably incurred in the
26 investigation and prosecution of suits, including, but not limited to,
27 expenses for expert witnesses, to be paid by the defendant when judgment is
28 rendered for the state, and in addition shall recover attorney's fees and
29 costs.

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

34 (d)(1) Every person who directly or indirectly controls another person
35 who is in violation of or liable under this chapter, and every partner,

1 officer, or director of another person who is in violation of or liable under
2 this chapter shall be jointly and severally liable for any penalties assessed
3 and any monetary judgments awarded in any proceeding for civil enforcement of
4 the provisions of the chapter; provided, that the persons to be held jointly
5 and severally liable knew or reasonably should have known of the existence of
6 the facts by reason of which the violation or liability exists.

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

9 (3) Every person subject to liability under subsection (d)(1) of
10 this section shall be deemed as a matter of law, to have purposefully availed
11 himself of the privileges of conducting activities within Arkansas,
12 sufficient to subject the person to the personal jurisdiction of the circuit
13 or chancery court hearing an action brought pursuant to this chapter."

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15 SECTION 5. Arkansas Code Annotated § 4-88-114 is amended to read as
16 follows:

17 "4-88-114. Voluntary compliance.

18 (a)(1) In the administration of this chapter, the Attorney General may
19 accept an assurance of voluntary compliance with respect to any method, act,
20 or practice deemed to be violative of the provisions of this chapter from any
21 person who has engaged or was about to engage in such method, act, or
22 practice.

23 (2) Any such assurance shall be in writing and may be enforced
24 by petitioning the circuit or chancery court of the county in which the
25 alleged violator resides or had his principal place of business, or the
26 Circuit or Chancery Court of Pulaski County.

27 (3) Such assurance of voluntary compliance shall not be
28 considered an admission of violation for any purpose.

29 (b)(1) The assurance of voluntary compliance shall provide for the
30 discontinuance by the person entering into the same of any method, act, or
31 practice alleged to be a violation of this chapter, and it may include a
32 stipulation for the payment by such person of reasonable expenses,
33 investigative costs, and attorney's fees incurred by the Attorney General.

34 (2) The assurance may also include a stipulation for payment to
35 consumers of actual damages or for restitution of money, property, or other

1 things received from consumers in connection with a violation of the
2 provisions of this chapter, and a stipulation for specific performance.

3 (c) A finding by a circuit or chancery court that a violation of such
4 assurance of voluntary compliance has occurred shall prima facie establish
5 that the person subject thereto knows, or in the exercise of due care should
6 know, that he has in the past violated or is violating the provisions of this
7 chapter.

8 (d) The assurance of voluntary compliance shall not be admissible into
9 evidence in any separate criminal proceeding within the meaning of this
10 chapter."

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12 *SECTION 6. Arkansas Code 4-88-101 is amended to read as follows:*

13 *"4-88-101. Applicability of chapter*

14 *This chapter does not apply to:*

15 (1) *Advertising or practices which are subject to and which comply*
16 *with any rule, order, or statute administered by the Federal Trade*
17 *Commission;*

18 (2) *Broadcasters, printers, publishers, and other persons engaging in*
19 *the dissemination of information who do not have actual knowledge of the*
20 *intent, design, purpose, or deceptive nature of the advertising or practice;*

21 (3) *Actions or transactions permitted under laws administered by the*
22 *State Insurance Commissioner, Arkansas Securities Commissioner, Arkansas*
23 *State Highway Commission, Bank Commissioner, or other regulatory body or*
24 *officer acting under statutory authority of this state or the United States,*
25 *unless a director of these divisions specifically requests the Attorney*
26 *General to implement the powers of this chapter;*

27 (4) *Actions or transactions of a public utility which have been*
28 *authorized by the Arkansas Public Service Commission, a municipal*
29 *authority, the Federal Energy Regulatory Commission, the Federal*
30 *Communications Commission, or other regulatory body or officer acting under*
31 *statutory authority of the United States."*

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33 *SECTION 7. All provisions of this act of a general and permanent*
34 *nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas*
35 *Code Revision Commission shall incorporate the same in the Code.*

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SECTION 8. 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 9. All laws and parts of laws in conflict with this act are hereby repealed.

/s/Rep. Lynn

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