

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

# A Bill

SENATE BILL 435

## For An Act To Be Entitled

8 "AN ACT TO AMEND ARKANSAS CODE ANNOTATED § 4-99-103 TO  
9 CLARIFY THE EXEMPTION FROM TELEPHONIC SELLER REGISTRATION  
10 BASED UPON SOLICITATIONS TO HOLDERS OF GROSS RECEIPTS TAX  
11 PERMITS; AND FOR OTHER PURPOSES."

## Subtitle

14 "TO CLARIFY THE EXEMPTION FROM  
15 TELEPHONIC SELLER REGISTRATION BASED  
16 UPON SOLICITATION TO HOLDERS OF GROSS  
17 RECEIPTS TAX PERMITS"

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

21 SECTION 1. Arkansas Code Annotated § 4-99-103 is amended to read as  
22 follows:

23 "4-99-103. Definitions.

24 As used in this chapter, the following terms have the following  
25 meanings:

26 (1) Consumer Protection Division shall mean the Consumer Protection  
27 Division of the Office of the Attorney General;

28 (2) Item means any goods and services, and includes coupon books  
29 which are to be used with businesses other than the seller's business;

30 (3) Owner means a person who owns or controls ten percent (10%) or  
31 more of the equity of, or otherwise has claim to ten percent (10%) or more of  
32 the net income of, a telephonic seller;

33 (4) Person includes an individual, firm, association, corporation,  
34 partnership, joint venture, or any other business entity;

35 (5) Principal means an owner, an executive officer of a corporation,

1 a general partner of a partnership, a sole proprietor of a sole  
2 proprietorship, a trustee of a trust, or any other individual with similar  
3 supervisory functions with respect to any person;

4 (6) Purchaser or prospective purchaser means a person who is  
5 solicited to become or does become obligated to a telephonic seller;

6 (7) Salesperson means any individual employed, appointed, or  
7 authorized by a telephonic seller, whether referred to by the telephonic  
8 seller as an agent, representative, or independent contractor, who attempts  
9 to solicit or solicits a sale on behalf of the telephonic seller. The  
10 principals of a seller are themselves salespersons if they solicit sales on  
11 behalf of the telephonic seller; and

12 (8) Telephonic seller or seller means a person who on his or her  
13 own behalf or through salespersons causes a telephone solicitation or  
14 attempted telephone solicitation to occur which meets the criteria specified  
15 in subdivisions (8)(A) or (B) of this section, and who is not exempted by  
16 subdivision 8(C) of this section, as follows:

17 (A) A telephone solicitation or attempted telephone solicitation  
18 wherein the telephonic seller initiates telephonic contact with a prospective  
19 purchaser and represents or implies one (1) or more of the following:

20 (i) That a prospective purchaser who buys one (1) or more  
21 items will also receive additional or other items, whether or not of the same  
22 type as purchased, without further cost. For purposes of subdivision 8(A)(i)  
23 of this section further cost does not include actual postage or common  
24 carrier delivery charges, if any;

25 (ii) That a prospective purchaser will receive a prize or  
26 gift, if the person also encourages the prospective purchaser to do either of  
27 the following:

28 (a) Purchase or rent any goods or services; or

29 (b) Pay any money, including, but not limited to, a  
30 delivery or handling charge;

31 (iii) That a prospective purchaser is able to obtain any  
32 item or service at a price which the seller states or implies is below the  
33 regular price of the item or service offered. This subdivision (8)(A)(iii)  
34 shall not apply to retailers who, within the previous twelve (12) months,  
35 have sold a majority of their goods or services through in-person sales at

1 retail stores;

2 (iv) That the seller is a person other than the person he  
3 or she is;

4 (v) That the items for sale are manufactured or supplied  
5 by a person other than the actual manufacturer or supplier;

6 (B)(i) A solicitation or attempted solicitation, which is  
7 made by telephone in response to inquiries generated by unrequested  
8 notifications sent by the seller to persons who have not previously purchased  
9 goods or services from the seller or who have not previously requested credit  
10 from the seller, to a prospective purchaser wherein the seller represents or  
11 implies to the recipient of the notification that any of the following  
12 applies to the recipient:

13 (a) That the recipient has in any manner been  
14 specially selected to receive the notification or the offer contained in the  
15 notification;

16 (b) That the recipient will receive a prize, gift,  
17 or award if the recipient calls the seller;

18 (c) That, if the recipient buys one (1) or more  
19 items from the seller, the recipient will also receive additional or other  
20 items, whether or not of the same type as purchased, without further cost or  
21 at a cost which the seller states or implies is less than the regular price  
22 of such items;

23 (ii) This subdivision (8)(B) does not apply to the  
24 solicitation of sales by a catalogue seller who periodically issues and  
25 delivers catalogues to potential purchasers by mail or by other means. This  
26 exception only applies if the catalogue includes a written description or  
27 illustration and the sales price of each item or merchandise offered for  
28 sale, includes at least twenty-four (24) full pages of written material or  
29 illustrations, is distributed in more than one (1) state, and has an annual  
30 circulation of not less than two hundred fifty thousand (250,000) customers;

31 (C) For purposes of this chapter, telephonic seller or  
32 seller does not include any of the following:

33 (i) A person offering or selling a security, and who is  
34 registered pursuant to § 23-42-301 et seq.;

35 (ii) A person offering or selling insurance, and who is

1 licensed pursuant to § 23-64-201 et seq.;

2 (iii) A person primarily soliciting the sale of a  
3 newspaper of general circulation, a magazine, or membership in a book or  
4 record club whose program operates in conformity with § 4-89-101 et seq. and  
5 § 4-95-101 et seq.;

6 (iv) A person soliciting business from prospective  
7 purchasers who have previously purchased from the business enterprise for  
8 which the person is calling;

9 (v)(a) A person soliciting without the intent to complete,  
10 and who does not complete, the sales presentation during the telephone  
11 solicitation but completes the sales presentation at a later face-to-face  
12 meeting between the solicitor and the prospective purchaser.

13 (b) However, if a seller directly following a  
14 telephone solicitation, causes an individual whose primary purpose it is to  
15 go to the prospective purchaser to collect the payment or deliver any item  
16 purchased, this exemption does not apply;

17 (vi) Any supervised financial institution or parent,  
18 subsidiary, or affiliate thereof. As used in this subdivision (8)(C)(vi),  
19 supervised financial institution means any commercial bank, trust company,  
20 savings and loan association, credit union, industrial loan company, personal  
21 property broker, consumer finance lender, commercial finance lender, or  
22 insurer, provided that the institution is subject to the supervision of an  
23 official or agency of this state or of the United States;

24 (vii) Any burial association operating pursuant to  
25 authority of § 23-78-101 et seq.;

26 (viii) A person, or an affiliate of a person, whose  
27 business is regulated by the Arkansas Public Service Commission;

28 (ix) An issuer or a subsidiary of an issuer that has a  
29 class of securities which is subject to, and which is either registered or  
30 exempt from registration to, § 23-42-401 et seq.;

31 (x) A person soliciting a transaction regulated by the  
32 Commodity Futures Trading Commission if the person is registered or  
33 temporarily licensed for this activity with the Commodity Futures Trading  
34 Commission under the Commodity Exchange Act, 7 U.S.C. § 1 et seq., and the  
35 registration or license has not expired or been suspended or revoked;

1                   (xi) A person soliciting a transaction directed to a  
2 purchaser holding a permit pursuant to the Arkansas Gross Receipts Act,  
3 § 26-51-101 et seq., and in which the solicitation deals with goods of a type  
4 that are subject to resale by the purchaser."

5           SECTION 2. All provisions of this act of a general and permanent  
6 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas  
7 Code Revision Commission shall incorporate the same in the Code.

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9           SECTION 3. If any provision of this act or the application thereof to  
10 any person or circumstance is held invalid, such invalidity shall not affect  
11 other provisions or applications of the act which can be given effect without  
12 the invalid provision or application, and to this end the provisions of this  
13 act are declared to be severable.

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15           SECTION 4. All laws and parts of laws in conflict with this act are  
16 hereby repealed.

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