

State of Arkansas

82nd General Assembly

Regular Session, 1999

A Bill

HOUSE BILL 2132

By: Representatives Broadway, Sheppard, Lavery, Creekmore, Lynn, Harris, Hathorn, Teague, P.
Malone, Prater

For An Act To Be Entitled

"AN ACT TO AMEND ARKANSAS CODE TITLE 4, CHAPTER 88 TO
ADD SUBCHAPTER 4 CONCERNING "CRAMMING" IN THE
TELECOMMUNICATIONS INDUSTRY; AND FOR OTHER PURPOSES."

Subtitle

"AN ACT TO AMEND ARKANSAS CODE TITLE 4,
CHAPTER 88 TO ADD SUBCHAPTER 4
CONCERNING "CRAMMING" IN THE
TELECOMMUNICATIONS INDUSTRY."

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

SECTION 1. Arkansas Code Title 4, Chapter 88 is amended by inserting
Subchapter 4 at the end thereof to read as follows:

"4-88-401. Definitions.

(a) 'Subscriber' means a telecommunications service provider's retail
business customer or retail residential customer.

(b) 'Person' means any individual, group, unincorporated association,
limited or general partnership, limited liability corporation, corporation,
professional fund raiser, charitable organization, or other business entity.

(c) 'Cramming' means effectuating, for any reason, a charge or
assessment which appears on the billing statement directed to the subscriber
by a local exchange carrier or telecommunications carrier, for any property or
service including, but not limited to, personal eight hundred (800) number
services, calling card plans, internet advertisements and web site services,
voice mail or paging services, psychic services or memberships, dating

1 services or memberships, travel club memberships, internet access services and
2 charitable contributions, without the authorization of the subscriber.

3
4 4-88-402. 'Cramming' prohibited.

5 (a) No telecommunications service provider, and no person acting on
6 behalf of any telecommunications service provider shall engage in the practice
7 of 'cramming', as defined in this subchapter.

8 (b) If however, a local exchange carrier is solely placing the
9 unauthorized charge or assessment on the subscriber's billing statement on
10 behalf of a wholly unrelated person, the local exchange carrier is not liable
11 under this subchapter if all of the following terms and conditions are met:

12 (1) The local exchange carrier confirmed that the wholly
13 unrelated person is properly certified by the Public Service Commission to do
14 business in Arkansas prior to billing for them.

15 (2) The local exchange carrier did not know or have reason to know
16 that the unauthorized charges were, in fact, unauthorized by the subscriber.

17 (3) The local exchange carrier is completely unrelated to the
18 person on whose behalf the local exchange carrier is placing the charge or
19 assessment on the billing statement, and the only function of the local
20 exchange carrier is the placement of the charges on the billing statement.

21
22 4-88-403. Investigation of 'cramming'.

23 (a) The Attorney General, or an official or agency designated by the
24 Attorney General, may conduct investigations of cramming complaints or
25 suspected violations of this subchapter, as the Attorney General deems
26 appropriate to fulfill his or her obligations hereunder.

27 (b) Nothing in this act precludes a billing telecommunications provider
28 or billing agent from taking action on its own to terminate billing and
29 collection services and contracts.

30 (c) Telecommunications providers, billing agents and salespersons shall
31 cooperate with the Attorney General's office in the efforts to enforce the
32 provisions of this act.

33
34 4-88-404. Cause of action.

35 A person who suffers damage or injury as a result of an offense or
36 violation described in this subchapter has a cause of action to recover actual

1 damages, including the refund of all unauthorized charges, and reasonable
2 attorney's fees.

3
4 4-88-405. Penalties, remedies, and enforcement.

5 (a) When a person violates this subchapter or a regulation prescribed
6 under this subchapter, such violation shall constitute an unfair or deceptive
7 act or practice as defined by the Deceptive Trade Practices Act, beginning at
8 Arkansas Code §§ 4-88-101. All remedies, penalties, and authority granted to
9 the Attorney General under the Deceptive Trade Practices Act shall be
10 available to the Attorney General for the enforcement of this subchapter.

11 (b) The remedies and penalties provided by this section are cumulative
12 to each other and the remedies or penalties available under all other laws of
13 this state."

14
15 SECTION 2. All provisions of this act of a general and permanent nature
16 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
17 Revision Commission shall incorporate the same in the Code.

18
19 SECTION 3. If any provision of this act or the application thereof to
20 any person or circumstance is held invalid, such invalidity shall not affect
21 other provisions or applications of the act which can be given effect without
22 the invalid provision or application, and to this end the provisions of this
23 act are declared to be severable.

24
25 SECTION 4. All laws and parts of laws in conflict with this act are
26 hereby repealed.