

1 State of Arkansas
2 82nd General Assembly
3 Regular Session, 1999

A Bill

HOUSE BILL 2160

4
5 By: Representative P. Malone
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For An Act To Be Entitled

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9 "AN ACT TO AMEND ARKANSAS CODE 4-88-113 CONCERNING
10 PRIVATE CIVIL ENFORCEMENT AND REMEDIES; AND FOR OTHER
11 PURPOSES. "

Subtitle

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14 "AN ACT TO AMEND ARKANSAS CODE 4-88-113
15 CONCERNING PRIVATE CIVIL ENFORCEMENT AND
16 REMEDIES. "

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

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21 SECTION 1. Arkansas Code 4-88-113 is amended to read as follows:

22 "4-88-113. Civil enforcement and remedies - Suspension or forfeiture of
23 charter, franchise, etc.

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

28 (1) Prevent the use or employment by such person of any
29 prohibited practices;

30 (2)(A) Restore to any purchaser who has suffered any
31 ascertainable loss by reason of the use or employment of the prohibited
32 practices any moneys or real or personal property which may have been acquired
33 by means of any practice declared to be unlawful by this chapter, together
34 with other damages sustained.

35 (B) In determining the amount of restitution to be awarded
36 under this section, the court shall consider affidavits from nontestifying

1 purchasers, provided that:

2 (i) The affidavits are offered as evidence of a
3 material fact;

4 (ii) The affidavits are more probative on the point
5 for which they are offered than any other evidence which the Attorney General
6 can procure through reasonable efforts;

7 (iii) The interests of justice will be best served by
8 admission of the affidavits; and

9 (iv) The Attorney General makes the names and
10 addresses of the affiants available to the adverse party sufficiently in
11 advance to provide the adverse party with a fair opportunity to communicate
12 with them; and

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

16 (b) Upon petition of the Attorney General, the court may order the
17 suspension or forfeiture of franchises, corporate charters, or other licenses
18 or permits or authorization to do business in this state.

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

23 (d)(1) Every person who directly or indirectly controls another person
24 who is in violation of or liable under this chapter, and every partner,
25 officer, or director of another person who is in violation of or liable under
26 this chapter shall be jointly and severally liable for any penalties assessed
27 and any monetary judgments awarded in any proceeding for civil enforcement of
28 the provisions of this chapter; provided, that the persons to be held jointly
29 and severally liable knew or reasonably should have known of the existence of
30 the facts by reason of which the violation or liability exists.

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

33 (3) Every person subject to liability under subdivision (d)(1) of
34 this section shall be deemed, as a matter of law, to have purposefully availed
35 himself of the privileges of conducting activities within Arkansas, sufficient
36 to subject the person to the personal jurisdiction of the circuit or chancery

1 court hearing an action brought pursuant to this chapter.

2 (e) As compensation for his services under this chapter, the Attorney
3 General shall be entitled to all expenses reasonably incurred in the
4 investigation and prosecution of suits, including, but not limited to,
5 expenses for expert witnesses, to be paid by the defendant when judgment is
6 rendered for the state, and in addition shall recover attorney's fees and
7 costs.

8 (f) Any person who suffers actual damage or injury as a result of an
9 offense or violation as defined in this chapter has a cause of action to
10 recover actual damages, if appropriate, and reasonable attorney's fees."

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

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

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

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