

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 83rd General Assembly
3 Regular Session, 2001

A Bill

SENATE BILL 805

4
5 By: Senator Argue
6
7

For An Act To Be Entitled

9 AN ACT TO PROTECT CONSUMERS INVOLVED IN ELECTRONIC
10 TRANSACTIONS FROM DECEPTIVE TRADE PRACTICES; AND FOR
11 OTHER PURPOSES.
12

Subtitle

13 TO PROTECT CONSUMERS INVOLVED IN
14 ELECTRONIC TRANSACTIONS FROM DECEPTIVE
15 TRADE PRACTICES.
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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 Title 4, Chapter 88 is amended by adding an
22 additional subchapter to read as follows:

23 Subchapter 6 -- Protection of Consumers Involved in Electronic
24 Transactions

25
26 4-88-601. Purpose.

27 (a) The General Assembly finds that the emergence of the Internet and
28 the World Wide Web have generated opportunities across all sectors, including
29 new jobs and new wealth, and have dramatically reduced the cost of
30 communication and transactions.

31 (b)(1) For this reason, laws dealing with all aspects of electronic
32 transactions are being developed.

33 (2) At the same time, it is vitally important to protect the
34 interests of consumers who deal with companies that offer an option for
35 electronic transactions.

36 (c) It is the intent of the General Assembly to protect consumers who

1 are parties to electronic transactions and that this section be liberally
 2 construed to meet its remedial purpose.

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 4 4-88-602. Definitions.

5 For purposes of this act:

6 (1) "Agreement" means the bargain of the parties in fact, as found in
 7 their language or inferred from other circumstances and from rules,
 8 regulations, and procedures given the effect of agreements under laws
 9 otherwise applicable to a particular transaction;

10 (2) "Contract" means the total legal obligation resulting from the
 11 parties' agreement as affected by this act and other applicable law;

12 (3) "Electronic" means relating to technology having electrical,
 13 digital, magnetic, wireless, optical, electromagnetic, or similar
 14 capabilities;

15 (4) "Electronic record" means a record created, generated, sent,
 16 communicated, received, or stored by electronic means;

17 (5) "Information" means data, text, images, sounds, codes, computer
 18 programs, software, databases, or the like; and

19 (6) "Transaction" means an action or set of actions occurring between
 20 two (2) or more persons relating to the conduct of business, commercial, or
 21 governmental affairs.

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 23 4-88-603. Electronic records.

24 (a) Whenever any consumer is involved in any electronic transaction,
 25 the use of an electronic record to provide or make available information
 26 required by a statute, regulation, or rule of law, to be provided or made
 27 available to a consumer shall satisfy any requirement that the record be in
 28 writing if:

29 (1) The consumer has affirmatively consented to the use and has
 30 not withdrawn the consent;

31 (2) The consumer, prior to consenting, is provided with a clear
 32 and conspicuous statement:

33 (A) Informing the consumer of:

34 (i) Any right or option of the consumer to have the
 35 record provided or made available on paper or in non-electronic form; and

36 (ii) The right of the consumer to withdraw the

1 consent to have the record provided or made available in an electronic form
2 and of any conditions, consequences, which may include termination of the
3 parties' relationship, or fees in the event of the withdrawal;

4 (B) Informing the consumer as to whether the consent
5 applies:

6 (i) Only to the particular transaction which gave
7 rise to the obligation to provide the record; or

8 (ii) To identified categories of records that may be
9 provided or made available during the course of the parties' relationship;

10 (C) Describing the procedures the consumer shall use to
11 withdraw consent as provided in subdivision (a)(2)(A) and to update
12 information needed to contact the consumer electronically; and

13 (D) Informing the consumer:

14 (i) How, after giving consent, the consumer may,
15 upon request, obtain a paper copy of an electronic record; and

16 (ii) If a fee will be charged for the copy;

17 (3) The consumer:

18 (A) Prior to consenting, is provided with a statement of
19 the hardware and software requirements for access to and retention of the
20 electronic records; and

21 (B) Consents electronically, or confirms his or her
22 consent electronically, in a manner that reasonably demonstrates that the
23 consumer can access information in the electronic form that will be used to
24 provide the information that is the subject of the consent; and

25 (4) After consent is given by a consumer, upon a determination
26 that a change in the hardware or software requirements needed to access or
27 retain electronic records creates a material risk that the consumer will not
28 be able to access or retain a subsequent electronic record that was the
29 subject of the consent, the person providing the electronic record provides
30 the consumer with a statement:

31 (A) Describing the revised hardware and software
32 requirements for access to and retention of the electronic records; and

33 (B) That complies with subdivision (a)(2)(C) and with
34 subdivision (a)(2)(D).

35 (b) Notwithstanding any other law, the use of an electronic record to
36 provide or make available information required by contract shall satisfy any

1 promise that the information will be provided or made available in writing
2 only if the consumer:

3 (1) Prior to consenting, is provided with a statement of the
4 hardware and software requirements for access to and retention of the
5 electronic records; and

6 (2) Consents electronically to receive written notices
7 electronically, or confirms consent electronically, in a manner that
8 reasonably demonstrates that the consumer can access information in the
9 electronic form that will be used to provide the information that is the
10 subject of the consent.

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12 4-88-604. Notice.

13 In any electronic transaction in which a consumer is a party, the
14 requirement that a notice be in writing is not satisfied by providing or
15 delivering any of the following types of notices electronically:

16 (1) The cancellation or termination of utility services including, but
17 not limited to water, heat, and power;

18 (2) Default, acceleration, repossession, foreclosure, or eviction, or
19 the right to cure, under a credit agreement secured by, or a rental agreement
20 for, a primary residence of an individual;

21 (3) The cancellation or termination of health insurance or benefits or
22 life insurance benefits, excluding annuities;

23 (4) Recall of a product, or material failure of a product, that risks
24 endangering health or safety; and

25 (5) Any document required to accompany any transportation or handling
26 of hazardous materials, pesticides, or other toxic or dangerous materials.

27
28 4-88-605. Preservation of rights.

29 If a consumer is required to provide notice to exercise or preserve the
30 consumer's rights under any law, the consumer may exercise or preserve that
31 right in the same manner in which the consumer was provided with notice of
32 that right.

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34 4-88-606. (a) If the parties to a transaction in which one (1) of the
35 parties is a consumer are both physically present in the same location, or
36 one (1) party is present along with the agent of another, any contract,

1 policy, notice, disclosure or other document provided at that time which is
2 provided in a form other than orally must also be provided in the same
3 medium, other than orally, in which sales materials are provided.

4 (b) This section shall not prevent the additional delivery of the same
5 documents by other means.

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7 4-88-607. Transferable records.

8 (a) If payment is made to a person that the system indicates is in
9 control of a transferable record, the obligor is discharged to the extent of
10 the payment.

11 (b) A transferable record remains subject to the defenses of
12 alteration and unauthorized signature regardless of whether the defenses are
13 apparent on the face of the record.

14 (c) A record shall not qualify as a transferable record if a system is
15 unable to reliably establish the person entitled to enforce the record or the
16 system permits the creation of multiple copies that appear to be
17 authoritative copies.

18 (d) A consumer is entitled, on request and without charge, to a
19 printed or printable copy of a transferable record at any time.

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21 4-88-608. Retention of electronic records.

22 (a) Except as provided in subsection (b), if a statute, regulation, or
23 other rule of law requires that a contract or other record be retained, that
24 requirement is met by retaining an electronic record of the information in
25 the contract or other record that:

26 (1) Accurately reflects the information set forth in the
27 contract or other record; and

28 (2) Remains accessible to all persons who are entitled to access
29 by statute, regulation, or rule of law, for the period required by the
30 statute, regulation, or rule of law, in a form that is capable of being
31 accurately reproduced for later reference, whether by transmission, printing,
32 or other method.

33 (b) If any law requires that a contract or other record be in writing,
34 the legal effect, validity, or enforceability of an electronic record of the
35 contract or other record may be denied if the electronic record is not in a
36 form that is capable of being retained and accurately reproduced for later

1 reference by all parties or persons who are entitled to retain the contract
2 or other record.

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4 4-88-609. A transaction entered into by a consumer electronically is
5 entered into at the individual's place of residence.

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7 4-88-610. In consumer transactions, the rules and requirements set out
8 in this subchapter shall not be changed by agreement of the parties.

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10 4-88-611. Any time period for action by or rights to a consumer which
11 is triggered by the sending or receipt of a notice shall be triggered by an
12 electronic notice upon the date:

13 (1) The consumer opens the notice;

14 (2) The consumer acknowledges electronic receipt of the notice; or

15 (3) The technology, by which the notice is sent, provides confirmation
16 that the notice has been received and opened by the consumer.

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18 4-88-612. An electronic record sent in a transaction with a consumer
19 shall not be considered to have been sent to or received by the intended
20 recipient if it is sent in a manner which cannot be opened, read, stored and
21 printed by that recipient.

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23 4-88-613. Enforcement.

24 Civil enforcement remedies found under § 4-88-113 shall apply to this
25 subchapter.

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