

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 84th General Assembly  
3 Regular Session, 2003

# A Bill

HOUSE BILL 1402

4  
5  
6  
7  
8  
9  
10

By: Representatives P. Bookout, Ledbetter, Biggs, Bledsoe, Bolin, Boyd, Bradford, Childers, Cowling, Dees, Ferguson, Fite, Gillespie, Gipson, Green, House, Jackson, Jacobs, Jones, King, Mack, Martin, Milligan, Napper, Oglesby, L. Prater, Rankin, Roebuck, Scrimshire, Scroggin, C. Taylor, Thyer, Weaver  
By: Senators J. Bookout, Altes, Horn, Laverty, Malone, Miller, Salmon, Wooldridge

## For An Act To Be Entitled

THE ARKANSAS RETAIL PRICE COMPARISON AND SAVINGS  
CLAIMS ACT.

11  
12  
13  
14  
15  
16  
17  
18  
19

## Subtitle

THE ARKANSAS RETAIL PRICE COMPARISON AND  
SAVINGS CLAIMS ACT.

20  
21

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

22  
23  
24

SECTION 1. This act shall be known as the "Arkansas Retail Price Comparison and Savings Claims Act."

25  
26

SECTION 2. Legislative findings and intent.

27

(a) The Arkansas General Assembly finds that:

28  
29

(1) During recent years, it has been noted that the discount claims, savings claims, and retail price comparison claims made in some retail advertising have become more and more farfetched and unreliable;

30  
31

(2) Statements in retail advertising concerning product prices, including discount claims, savings claims, and retail price comparison claims, are statements of fact the bases of which are known, or should be known, to the advertisers making the claims, but the bases of the claims are not generally known by the consuming public;

32  
33  
34  
35  
36

(3) The retail advertisers intend that consumers make shopping and purchasing decisions based upon the discount claims, savings claims, and



1 retail price comparison claims made by the advertisers, and many Arkansas  
2 consumers rely upon this advertising in making their shopping and purchasing  
3 decisions;

4 (4) In making their shopping and purchasing decisions, the  
5 consumers of Arkansas are entitled to expect and rely upon a legitimate  
6 factual basis for the discount claims, savings claims, and retail price  
7 comparison claims being made by retail sellers; and

8 (5) It is in the interest of both the consumers of Arkansas and  
9 the legitimate retail sellers in Arkansas that advertised discount claims,  
10 savings claims, and retail price comparison claims be fair, accurate, non-  
11 deceptive, and non-misleading.

12 (b) The Arkansas General Assembly intends that this act protect the  
13 interests of Arkansas consumers in accurate and non-deceptive comparison  
14 pricing, and the interests of Arkansas retailers in fair advertising  
15 competition, and the General Assembly intends that this act be liberally  
16 construed to effectuate that goal.

17  
18 SECTION 3. Definitions.

19 As used in this act, unless the context requires otherwise:

20 (1) “Advertisement” means statements and representations contained on  
21 any label, tag, or sign attached to, printed on, or accompanying merchandise  
22 offered for sale or printed in a catalog or any other sales literature,  
23 whatever medium may be used to communicate the statements or representations;

24 (2) “Clearly and conspicuously” means that the statement,  
25 representation, or term being disclosed is reasonably understandable, is in a  
26 size, color contrast, or audibility, is so placed and presented as to be  
27 readily noticeable, is in close proximity to the information it modifies;

28 (3) “Comparable merchandise” means merchandise that is substantially  
29 similar in composition, style, design, model, kind, variety, service, or  
30 performance characteristics to the merchandise to which it is compared in any  
31 advertisement;

32 (4) “Comparative price” means the price or other description of value  
33 of merchandise to which a seller compares its current price in any  
34 advertisement;

35 (5) “List price” means a price given to a retailer by a manufacturer  
36 or other supplier as a suggested retail price for the merchandise and

1 includes the term “manufacturer’s suggested retail price”;

2 (6) “Price comparison” means an expressed or implied comparison in any  
 3 advertisement, whether or not expressed wholly or in part in dollars, cents,  
 4 fractions or percentages, of a seller’s current price for merchandise with  
 5 any other price or statement of value, whether or not the price is actually  
 6 stated in the advertisement;

7 (7)(A) “Seller” means any person who offers any merchandise for sale  
 8 at any location and who disseminates advertisements for that product in  
 9 Arkansas;

10 (B) “Seller” includes any officer, agent, employee, sales  
 11 person, or representative of the seller, and any advertising agency employed  
 12 by a seller; and

13 (8) “Trade area” means the geographic area where the seller’s outlets  
 14 are located and where the seller’s advertisements are disseminated.

15  
 16 SECTION 4. Identifying basis of price comparison.

17 (a) It is a deceptive act or practice for a seller to make a price  
 18 comparison or claim a savings as to any merchandise offered for sale unless  
 19 the seller clearly and conspicuously discloses the basis for, or source of,  
 20 the price comparison or savings claim.

21 (b)(1) A seller may make a price comparison or claim a savings without  
 22 the required disclosure if the price comparison or savings claim is based on  
 23 the seller’s own former price as described in section 5 of this act.

24 (2) Terms such as “regular”, “regularly”, “formerly”,  
 25 “originally”, “was”, and words of similar meaning may be used by the seller  
 26 to identify the seller’s own former price.

27  
 28 SECTION 5. Comparison to the seller’s own former price.

29 It is a deceptive act or practice for a seller to compare the seller’s  
 30 current price with the seller’s former price for any merchandise unless:

31 (1) The former price was a price at which a substantial number of  
 32 sales were made by the seller during the three (3) months immediately  
 33 preceding the price comparison;

34 (2) The former price was a price at which a substantial number of  
 35 sales were made by the seller and the seller clearly and conspicuously  
 36 discloses the dates during which a substantial number of sales were made by

1 the seller at the former price; or

2 (3) The former price was a price at which the seller offered the  
 3 merchandise for a reasonably substantial period of time in the recent,  
 4 regular course of its business, openly, actively, and in good faith, with an  
 5 intent to sell the merchandise at that price.

6  
 7 SECTION 6. Comparison to seller's future prices.

8 It is a deceptive act or practice for a seller to make an introductory  
 9 offer or to compare its current price for merchandise with the price at which  
 10 the merchandise will be offered in the future, unless:

11 (1) The future price takes effect within a reasonable time after the  
 12 introductory offer or price comparison is published; and

13 (2) The future price of the merchandise is, after the end of the  
 14 introductory sale, properly established as the seller's regular and customary  
 15 price.

16  
 17 SECTION 7. Range of savings or price comparison claims.

18 (a) It is a deceptive act or practice for a seller to state or imply  
 19 that any merchandise is being offered for sale at a range of prices, or at a  
 20 range of percentage or fractional discounts, unless the highest price or the  
 21 lowest discount in the range is clearly and conspicuously disclosed in the  
 22 advertisement and a reasonable number of the items in the advertisement are  
 23 offered with the largest advertised discount or the lowest advertised price.

24 (b) If at least five (5%) percent of the items in the advertisement  
 25 are offered with the largest advertised discount or the lowest advertised  
 26 price, a rebuttable presumption exists that a reasonable number were offered  
 27 with at least the largest advertised discount or the lowest advertised price.

28  
 29 SECTION 8. Use of list price or similar comparisons.

30 It is a deceptive act or practice for a seller to make a price  
 31 comparison or to claim a savings, expressed or implied, from a list price or  
 32 term of similar meaning, unless:

33 (1) The list price does not exceed the highest price at which  
 34 substantial sales of the merchandise have been made in the seller's trade  
 35 area;

36 (2) The list price is the price at which the seller offered the

1 merchandise for a reasonably substantial period of time in the recent,  
 2 regular course of its business, openly, actively, and in good faith, with an  
 3 intent to sell the merchandise at that price;

4 (3) The list price does not exceed the highest price at which the  
 5 product is offered by a reasonable number of sellers in the seller's trade  
 6 area for a reasonably substantial period of time in the recent, regular  
 7 course of business; or

8 (4) The list price does not exceed the seller's cost plus the  
 9 percentage markup regularly used by the seller in the actual sale of the  
 10 merchandise or merchandise of a similar class or kind, in the seller's  
 11 recent, regular course of business.

12  
 13 SECTION 9. Comparison to competitor's price.

14 It is a deceptive act or practice for a seller to compare the seller's  
 15 price with a price currently being offered by another seller for merchandise  
 16 unless the merchandise is comparable merchandise and the comparative price is  
 17 at or below the price at which the comparable merchandise is currently being  
 18 offered in the seller's trade area by a reasonable number of other sellers in  
 19 the same trade area, or another seller in the same trade area in which the  
 20 seller is identified in the advertisement.

21  
 22 SECTION 10. Bargain offers based on the purchase of other merchandise  
 23 and use of the word "free".

24 (a) It is a deceptive act or practice to use the word "free", or words  
 25 of similar meaning, or to represent bargain offers, including "buy one - get  
 26 one free", "buy one - get one at half-price", "two for one", and "one cent  
 27 sale", when describing merchandise to be given to a customer who purchases  
 28 other merchandise, if the seller recovers, in whole or in part, the cost of  
 29 the free or bargain merchandise by marking up the price of the item which  
 30 must be purchased, by substituting an inferior item or service, or otherwise.

31 (b) It is a deceptive act or practice to represent that other  
 32 merchandise is being offered free or at a bargain price with the sale if the  
 33 advertised merchandise can be purchased from the advertiser at a lesser price  
 34 without the free or bargain merchandise, particularly if the merchandise is  
 35 usually sold at a price arrived at through bargaining.

SECTION 11. Use of sale terminology.

(a) It is a deceptive act or practice for a seller to use words such as "sale", "sale prices", "now only \$ ", or other words or phrases that imply a price savings unless the price of the merchandise is reduced by a reasonable amount from the former price of the merchandise.

(b) If the seller reduces the price by five percent (5%) or more from the former price, a rebuttable presumption exists that the price reduction was of a reasonable amount.

(c) However, the term "sale" may be used in an advertisement where not all items are offered at a reduction from regular price if the items are clearly and conspicuously identified in the advertisement.

SECTION 12. Enforcement by the Attorney General.

(a) Any act or practice described as a deceptive act or practice in this act shall constitute an unfair or deceptive act or practice as defined under Arkansas Code §§ 4-88-101 through 4-88-115.

(b) All authority granted to the Attorney General and all remedies available to the Attorney General under Arkansas Code §§ 4-88-101 through 4-88-115 shall be granted to and available to the Attorney General for the enforcement of this act.