

State of Arkansas

76th General Assembly

Regular Session, 1987

HOUSE BILL 1848

By: Representative Goodwin

"AN ACT TO REGULATE CERTAIN BUSINESS SOLICITATIONS THAT
CLAIM TO BE AWARDING A PRIZE; AND FOR OTHER PURPOSES."

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

SECTION 1. For the purpose of this Act:

(a) "gift or prize agreement" means a transaction in which a person is notified by telephone or mail that he or she has won or is eligible to win a gift or prize but to claim the gift or prize the person must: (1) purchase or rent goods or services; or (2) pay any money, whether in cash, any form of negotiable instrument or credit card for items including but not limited to delivery, shipping or handling charges.

(b) "seller" means any person, partnership, corporation or association that offers a gift or prize agreement.

(c) "consumer" means any person who is offered a gift or prize from a seller.

SECTION 2. (a) A gift or prize agreement may be canceled by a consumer within three days after receiving the gift or prize or any other goods or services pursuant to the gift or prize agreement. Cancellation occurs when the consumer sends by mail a written notice of his or her cancellation of the agreement to the seller or notifies the seller in person or by telephone of the cancellation.

(b) Upon cancellation of the agreement the consumer shall be entitled to a full refund of any amount paid under the agreement for the purchase or rental of goods or services or any amount paid for any charges for items including but not limited to delivery, shipping or handling charges. The seller shall make the refund within ten (10) days after notice of cancellation.

(c) This Act shall not apply to any gift or prize agreement entered into after: (1) the consumer has been given a reasonable opportunity to inspect the gift or prize; (2) the consumer has been given an accurate detailed description of the gift or prize; or (3) the consumer has been furnished with an accurate photograph of the gift or prize.

SECTION 3. (a) Within twenty (20) days after a gift or prize agreement has been canceled, the consumer, upon demand, must tender to the seller any goods delivered by the seller pursuant to the sale or offer, but he is not obligated to tender at any place other than his own address. If the seller fails to demand possession of goods within twenty (20) days after cancellation, the goods become the property of the buyer without obligation to pay for them.

(b) The consumer has a duty to take reasonable care of the goods in his possession both prior to cancellation and during the twenty-day (20) period following. During the twenty-day (20) period after cancellation, except for the consumer's duty of care, the goods are at the seller's risk.

SECTION 4. If a seller fails to provide a refund as provided in this Act the consumer shall recover from the seller an amount equal to:

(a) ten percent (10%) of the transaction total or one hundred dollars (\$100), whichever is greater, and

(b) the actual damages, including any incidental, consequential and special damages, sustained by the consumer as a result of the violation.

SECTION 5. The Attorney General or an attorney designated by him shall have the enforcement powers granted to him or the Consumer Counsel by Act 92 of 1971 for any violation of this Act. Provided further, the prosecuting attorneys of the various districts and counties of this State shall also have full authority to enforce the provisions of this Act. Nothing in the provisions of this Act shall prohibit the bringing of a civil action against a violator of the Act by a consumer.

SECTION 6. Any seller who knowingly and willfully violates this Act shall be guilty of a misdemeanor and upon conviction thereof shall be subject

to a fine of not more than two hundred and fifty dollars (\$250.00) or by imprisonment of not exceeding one (1) year, or both.

SECTION 7. The rights afforded to a consumer pursuant to this Act shall be supplemental to any rights the consumer may have pursuant to Act 462 of 1973, as amended, which relates to home solicitation sales.

SECTION 8. All laws or parts of laws in conflict with this Act are hereby repealed.

