

1 State of Arkansas
2 95th General Assembly
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4

As Engrossed: H2/20/25

A Bill

HOUSE BILL 1473

5 By: Representative Pilkington
6 By: Senator C. Penzo
7

For An Act To Be Entitled

9 AN ACT TO AMEND THE LAW CONCERNING HEALTH-RELATED
10 CASH DISCOUNT CARDS; AND FOR OTHER PURPOSES.
11

Subtitle

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13 TO AMEND THE LAW CONCERNING HEALTH-
14 RELATED CASH DISCOUNT CARDS.
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17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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19 SECTION 1. Arkansas Code § 4-106-201 is amended to read as follows:
20 4-106-201. Prohibited practices.

21 It shall be ~~unlawful and~~ a violation of this subchapter for any person
22 to sell, market, promote, advertise, or otherwise distribute any card or
23 other purchasing mechanism or device which is not insurance that purports to
24 offer discounts or access to discounts from healthcare providers in health-
25 related purchases in exchange for fees, dues, charges, or other financial
26 consideration paid by a consumer if:

27 (1) The card or other purchasing mechanism or device does not
28 expressly provide in bold and prominent type that the discounts are not
29 insurance;

30 (2) The card or other purchasing mechanism or device does not
31 expressly provide in bold and prominent type on the card or in a statement
32 attached to the card that the consumer has the right to cancel his or her
33 registration within thirty (30) days from the effective date of the card or
34 other purchasing mechanism or device;

35 (3) The discounts are not specifically authorized by an
36 individual and separate contract with each healthcare provider listed in



1 conjunction with the card or other purchasing mechanism or device;

2 (4) The discounts or access to discounts offered or the range of
3 discounts or access to the range of discounts offered are, regardless of the
4 literal wording used:

5 (A) Misleading;

6 (B) Deceptive; or

7 (C) Fraudulent;

8 (5) The card or any advertisements for the card in any form
9 include words or phrases that are commonly associated with the business of
10 insurance, such as "health plan", "preexisting condition", or "coverage", in
11 a way that could have a tendency to deceive the public into believing that
12 the cards are a form of insurance;

13 (6) The contract for the card or other purchasing mechanism or
14 device, or any other document that is provided to the consumer at the time
15 the card or other purchasing mechanism or device is received, does not
16 contain:

17 (A) Information in bold and prominent type that a consumer
18 has the right to cancel his or her registration within thirty (30) days from
19 the effective date of the card or other purchasing mechanism or device; and

20 (B) Instructions on how a consumer may cancel his or her
21 registration;

22 (7) Printed advertisements and other printed promotional
23 materials concerning the card or other purchasing mechanism or device do not
24 expressly provide in bold and prominent type that:

25 (A) The discounts are not insurance; and

26 (B) The card or other purchasing mechanism or device
27 contains a thirty-day cancellation period; or

28 (8) Electronic advertisements and other electronic promotions
29 concerning the card or other purchasing mechanism or device, including, but
30 not limited to, radio, television, the internet, and telephone solicitations,
31 do not expressly state in a prominent manner that:

32 (A) The discounts are not insurance; and

33 (B) A consumer has the right to cancel the registration
34 within a thirty-day period under § 4-106-205.

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36 SECTION 2. Arkansas Code § 4-106-202 is amended to read as follows:

1 4-106-202. Penalty.

2 (a) The Attorney General, any person, firm, private corporation,
3 municipal or other public corporation, or trade association may maintain an
4 action to enjoin a continuance of any act or acts in violation of this
5 *subchapter and, if injured thereby,* for the recovery of damages.

6 (b) Any person subject to liability under this section shall be deemed
7 as a matter of law to have purposely availed himself or herself of the
8 privileges of conducting activities within Arkansas sufficient to subject the
9 person to the personal jurisdiction of the circuit court hearing an action
10 brought pursuant to this subchapter.

11 (c) An action for violation of this section may be brought:

12 (1) In the county where the plaintiff resides;

13 (2) In the county where the plaintiff conducts business;

14 (3) In the county where the card or other purchasing mechanism
15 or device was sold, marketed, promoted, advertised, or otherwise distributed;
16 or

17 (4) In the Pulaski County Circuit Court if the action is
18 initiated by the Attorney General.

19 (d)(1) If, in such action, the court shall find that the defendant is
20 violating or has violated any of the provisions of this subchapter, it shall
21 enjoin the defendant from a continuance thereof.

22 (2) It shall not be necessary, except to recover for actual
23 damages ~~under subdivision (d)(3)(B) of this section,~~ that actual damages to
24 the plaintiff be alleged or proved.

25 (3) In addition to injunctive relief, the plaintiff in the
26 action shall be entitled to recover from the defendant+

27 ~~(A) Whichever is greater:~~

28 ~~(i) One hundred dollars (\$100) per card or other~~
29 ~~purchasing mechanism or device sold, marketed, promoted, advertised, or~~
30 ~~otherwise distributed within the State of Arkansas; or~~

31 ~~(ii) Ten thousand dollars (\$10,000);~~

32 ~~(B) Three three (3) times the amount of the actual~~
33 ~~damages, if any, sustained;~~

34 ~~(C) Reasonable attorney's fees;~~

35 ~~(D) Costs; and~~

36 ~~(E) Any other relief which the court deems proper.~~

1 (e)(1) All actions under this section shall be commenced within two
2 (2) years after the date on which the violation of this subchapter occurs or
3 within two (2) years after the person bringing the action discovers or in the
4 exercise of reasonable diligence should have discovered the occurrence of the
5 violation of this subchapter.

6 (2) The period of limitation provided in this section may be
7 extended for a period of one hundred eighty (180) days if the person bringing
8 the action proves by a preponderance of the evidence that the failure to
9 timely commence the action was caused by the defendant's engaging in conduct
10 solely calculated to induce the plaintiff to refrain from or postpone the
11 commencement of the action.

12 (f)(1) Any defendant in an action brought under the provisions of this
13 subchapter may be required to testify under § 16-43-211 and as otherwise
14 provided by law.

15 (2) In addition, the books and records of the defendant may be
16 brought into court and introduced, by reference, into evidence.

17 (g)(1) An action under this section may be brought by a consumer if,
18 before initiating an action against a business for damages on an individual
19 or class-wide basis, a consumer provides a business thirty (30) days' written
20 notice identifying the specific provisions of this subchapter the consumer
21 alleges have been or are being violated.

22 (2) In the event a cure is possible and if within the thirty
23 (30) days under subdivision (g)(1) of this section the business cures the
24 noticed violation and provides the consumer an express written statement that
25 the violations have been cured and that no further violations shall occur, an
26 action for individual damages or class-wide damages shall not be initiated
27 against the business.

28 (h) The remedies prescribed in this section are cumulative and in
29 addition to the remedies prescribed in the Deceptive Trade Practices Act, §
30 4-88-101 et seq., and any other applicable criminal, civil, or administrative
31 penalties.

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33 SECTION 3. DO NOT CODIFY. Retroactivity.

34 This act shall apply retroactively to an act that is alleged to be in
35 violation of this subchapter that occurred before the effective date of this
36 act.

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/s/Pilkington