

State of Arkansas
91st General Assembly
Regular Session, 2017

A Bill

HOUSE BILL 2213

By: Representative Henderson

For An Act To Be Entitled

AN ACT CONCERNING ARKANSAS PRICE DISCRIMINATION; TO
ALLOW RETAILERS TO OFFER DISCOUNTS TO CUSTOMERS; TO
DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.

Subtitle

CONCERNING ARKANSAS PRICE DISCRIMINATION;
TO ALLOW RETAILERS TO OFFER DISCOUNTS TO
CUSTOMERS; AND TO DECLARE AN EMERGENCY.

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

SECTION 1. DO NOT CODIFY. Legislative findings and purpose.

(a) The General Assembly finds that:

(1) Arkansas consumers benefit from discount programs that retailers provide to consumers, such as coupons, loyalty programs, and discounts to members of certain groups, such as students, senior citizens, or members of the United States Armed Forces;

(2) Arkansas retailers should have the right to design discount programs for their customers that offer discounts without charge on a nondiscriminatory basis to all members of the public or on a nondiscriminatory basis to all members of a particular group of consumers;

(3) Arkansas retailers that have implemented such discount programs in the past should not be held liable for penalties by those persons who chose not to participate in such programs or who were not eligible for such programs; and

(4) It is in the best interests of the consumers of this state to allow retailers to design and implement discount programs for consumers



without fear of liability.

(b) The purpose of this act is to clarify that current Arkansas law does not prohibit a retailer from offering discounts without charge on a nondiscriminatory basis to all members of the public or on a nondiscriminatory basis to all members of a particular group of consumers.

SECTION 2. Arkansas Code § 4-75-501 is amended to read as follows:

4-75-501. Manufactured products, coal oil, or dressed beef.

(a) It ~~shall be~~ is unlawful for any person, company, corporation, or association engaged in the sale of any manufactured product, coal oil, or dressed beef, to:

(1) Sell any such manufactured product, coal oil, or dressed beef at a greater cash price at any place in this state, than the person, company, corporation, or association sells the manufactured product, coal oil, or dressed beef at other points in this state, after making due allowance for difference in cost of carriage or other necessary cost; or

(2) Willfully refuse or fail to allow to any person, corporation, or company making purchases of the manufactured product, coal oil, or dressed beef all rebates and discounts which are granted by them to other purchasers, for cash, of like quantities of the manufactured product, coal oil, or dressed beef.

(b) This section does not apply to:

(1) A discount or rebate that is offered without charge to all purchasers on an equal basis, regardless of whether the purchaser chooses to accept or fulfill any of the nonmonetary conditions for receiving the discount or rebate; or

(2) A discount or rebate that is offered without charge to all members of a specified group, including without limitation senior citizens, students, or current or former members of the armed forces if that group shall not be defined by race, color, sex, religion, or national origin of the purchaser.

~~(b)(1)(c)(1)~~ Any A person, company, corporation, or association ~~violating any of the provisions of that violates~~ this section shall forfeit not less than two hundred dollars (\$200) nor more than one thousand dollars (\$1,000) for ~~every such~~ each offense.

(2) Each unlawful sale or refusal or failure to allow the rebate

or discount ~~shall constitute~~ constitutes a separate offense.

~~(e)-(1)~~(d)(1) The penalty in cases ~~pursuant to~~ under this section is to be recovered by an action in the name of the person, company, corporation, or association damaged by the greater price or refusal of, or failure to allow, the rebate or discount or in the name of the state at the relation of any prosecuting attorney in this state.

(2)(A) The moneys ~~thus~~ collected under subdivision (d)(1) of this section shall be paid to the person, company, corporation, or association bringing the suit, ~~and, when the suit,~~

(B) ~~If a suit~~ is brought in the name of the state, ~~the moneys collected shall be paid,~~ one-fourth ($\frac{1}{4}$) of the moneys collected shall be paid to the prosecuting attorney bringing the suit and three-fourths ($\frac{3}{4}$) of the moneys collected shall be paid to the Public School Fund.

(3) ~~Actions and suits~~ An action or suit under this section may be brought in any county in which the offense was committed by action at law or suit in equity in the circuit court.

(4)(A) ~~When the defendants are persons, companies, or associations,~~ If a defendant is a person, corporation, or association the service of summons upon the ~~defendants~~ defendant in any county of this state shall be a sufficient service.

(B) ~~Where~~ If the defendant is a corporation, the service of summons upon any agent of the corporation in this state shall be a lawful service.

(5) Several offenses under this section may be joined in one (1) action or suit.

SECTION 3. RETROACTIVITY. This act is retroactive to January 1, 2012.

SECTION 4. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that discount and rebate programs are not available to all Arkansas consumers; that requiring discount and rebate programs to be available to all eligible consumers is important to the economic stimulation of the state; and that this act is necessary because Arkansas consumers will benefit from immediate access to discount and rebate programs. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and

safety shall become effective on:

(1) The date of its approval by the Governor;

(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.

APPROVED: 04/03/2017