

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
95th General Assembly
Regular Session, 2025

As Engrossed: S4/9/25

A Bill

SENATE BILL 441

By: Senators Hester, C. Penzo

By: Representative Pilkington

For An Act To Be Entitled

AN ACT TO CREATE THE JUNK LAWSUIT PREVENTION ACT OF
2025; AND FOR OTHER PURPOSES.

Subtitle

TO CREATE THE JUNK LAWSUIT PREVENTION
ACT OF 2025.

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

SECTION 1. DO NOT CODIFY. Title.

This act shall be known and may be cited as the "Junk Lawsuit
Prevention Act of 2025".

SECTION 2. Arkansas Code § 4-106-201 is amended to read as follows:

4-106-201. Prohibited practices.

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

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

(2) The card or other purchasing mechanism or device does not expressly provide in bold and prominent type on the card or in a statement attached to the card that the consumer has the right to cancel his or her



registration within thirty (30) days from the effective date of the card or other purchasing mechanism or device;

(3) The discounts are not specifically authorized by an individual and separate contract with each healthcare provider listed in conjunction with the card or other purchasing mechanism or device;

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

- (A) Misleading;
- (B) Deceptive; or
- (C) Fraudulent;

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

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

- (A) Information in bold and prominent type that a consumer has the right to cancel his or her registration within thirty (30) days from the effective date of the card or other purchasing mechanism or device; and
- (B) Instructions on how a consumer may cancel his or her registration;

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

- (A) The discounts are not insurance; and
- (B) The card or other purchasing mechanism or device contains a thirty-day cancellation period; or

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

- (A) The discounts are not insurance; and

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

SECTION 3. Arkansas Code § 4-106-202 is amended to read as follows:

4-106-202. Penalty.

(a)(1) ~~The Attorney General, any~~ Any person, firm, private corporation, municipal or other public corporation, or trade association, if injured, may maintain an action to enjoin a continuance of any act or acts in violation of this subchapter and ~~for the recovery of~~ to recover damages.

(2) The Attorney General may maintain an action to enjoin a continuance of any act or acts in violation of this subchapter and to recover damages.

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

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

(1) In the county where the plaintiff resides;

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

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

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

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

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

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

~~(A) Whichever is greater:~~

~~(i) One hundred dollars (\$100) per card or other purchasing mechanism or device sold, marketed, promoted, advertised, or~~

~~otherwise distributed within the State of Arkansas; or~~

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

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

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

~~(D) Costs; and~~

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

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

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

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

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

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

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

(h) The remedies prescribed in this section are cumulative and in addition to the remedies prescribed in the Deceptive Trade Practices Act, §

4-88-101 et seq., and any other applicable criminal, civil, or administrative penalties.

SECTION 4. DO NOT CODIFY. Retroactivity.

This act is retroactive to January 1, 2021.

/s/Hester