

Arkansas Legislature Passes a Bill to Limit Private Claims under the Arkansas Deceptive Trade Practices Act



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Arkansas has taken a big step toward creating a more business-friendly climate by amending the Arkansas Deceptive Trade Practices Act (ADTPA). House Bill 1742 was sent to Governor Hutchinson on Friday for his signature. This bill changes the ADTPA in three important ways.

First, it clarifies that no one can sue a company for alleged unfair trade practices without proving that he or she suffered an actual financial loss. “Actual financial loss” means “an ascertainable amount of money that is equal to the difference between the amount paid by a person for goods or services and the actual market value of the goods or services provided to that person.” Under the old law, a person had to prove an “actual damage or injury.” The new language is important because it makes clear that there must be a difference in the money value of the product as marketed and as it was actually sold. It is not enough for a consumer to argue that the product is not as it was marketed, if its money value is the same.

Second, it requires a Plaintiff to have relied on the deceptive trade practice to recover any damages. The Arkansas Supreme Court had not yet addressed whether reliance was required under the old law, but now it clearly is. Here’s how this works. If Company A sells a product and markets it as “all natural,” a Plaintiff can only sue if the reason she purchased that product was because she believed it was “all natural.” If she purchased it for some other reason, the fact the product may not have been “all natural” is irrelevant to her claim.

Third, with one exception, private class actions are no longer permitted under the ADPTA. This is a sea change in Arkansas because it means that consumers can only sue under the ADTPA for their own actual financial loss and cannot do so on behalf of a similarly situated class of people. That right rests solely with the Attorney General.

It remains to be seen how Arkansas Courts will interpret this new language, and, if history is any guide, there may be Constitutional challenges to the new law. In the meantime, it limits private ADTPA claims to cases in which individuals were financially harmed because they relied on unfair trade practices.