

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1315 Session of
1995

INTRODUCED BY FISHER, BELL, ANDREZESKI, HELFRICK, JUBELIRER,
STAPLETON, WENGER, BRIGHTBILL, O'PAKE, AFFLERBACH, STOUT,
PORTERFIELD AND TOMLINSON, NOVEMBER 21, 1995

REFERRED TO CONSUMER PROTECTION AND PROFESSIONAL LICENSURE,
NOVEMBER 21, 1995

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
2 Consolidated Statutes, further providing for deceptive
3 business practices.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Section 4107 heading, (a) and (c) of Title 18 of
7 the Pennsylvania Consolidated Statutes are amended and the
8 section is amended by adding a subsection to read:

9 § 4107. Deceptive or fraudulent business practices.

10 (a) Offense defined.--A person commits [a misdemeanor of the
11 second degree] an offense if, in the course of business, he:

12 (1) uses or possesses for use a false weight or measure,
13 or any other device for falsely determining or recording any
14 quality or quantity;

15 (2) sells, offers or exposes for sale, or delivers less
16 than the represented quantity of any commodity or service;

17 (3) takes or attempts to take more than the represented

1 quantity of any commodity or service when as buyer he
2 furnishes the weight or measure;

3 (4) sells, offers or exposes for sale adulterated or
4 mislabeled commodities;

5 (5) makes a false or misleading statement in any
6 advertisement addressed to the public or to a substantial
7 segment thereof for the purpose of promoting the purchase or
8 sale of property or services;

9 (6) makes a false or misleading written statement for
10 the purpose of obtaining property or credit; [or]

11 (7) makes a false or misleading written statement for
12 the purpose of promoting the sale of securities, or omits
13 information required by law to be disclosed in written
14 documents relating to securities[.] ;

15 (8) promotes or engages in any plan by which goods or
16 services are sold to a person for a consideration and upon
17 the further consideration that the purchaser secure or
18 attempt to secure one or more persons likewise to join the
19 plan; each purchaser to be given the right to secure money,
20 goods or services depending upon the number of persons
21 joining the plan; in addition, promotes or engages in any
22 plan, commonly known as or similar to the so-called "Chain-
23 Letter Plan" or "Pyramid Club." As used in this paragraph,
24 the terms "Chain-Letter Plan" or "Pyramid Club" mean any
25 scheme for the disposal or distribution of property, services
26 or anything of value whereby a participant pays valuable
27 consideration, in whole or in part, for an opportunity to
28 receive compensation for introducing or attempting to
29 introduce one or more additional persons to participate in
30 the scheme or for the opportunity to receive compensation

1 when a person introduced by the participant introduces a new
2 participant. As used in this paragraph, the term
3 "consideration" means an investment of cash or the purchase
4 of goods, other property, training or services, but does not
5 include payments made for sales demonstration equipment and
6 materials for use in making sales and not for resale
7 furnished at no profit to any person in the program or to the
8 company or corporation, nor does the term apply to a minimal
9 initial payment of \$25 or less;

10 (9) makes a false or misleading statement regarding the
11 need for services or repairs or any replacements or parts or
12 products which are unnecessary;

13 (10) makes a false or misleading estimate regarding the
14 rendering of a service, repair or replacement cost and
15 performs the service, repair or replacement at a higher cost
16 without the permission of the consumer;

17 (11) obtains or attempts to obtain the transfer of
18 possession, control or ownership of property of another by
19 deception through communications conducted primarily by
20 telephone involving the following:

21 (i) direct or implied claims that the other person
22 contacted has won or is about to win a prize;

23 (ii) direct or implied claims that the other person
24 contracted may be able to recover any losses suffered by
25 the other person in connection with a prize promotion; or

26 (iii) misrepresentation of the value of goods or
27 services offered through the communication; or

28 (12) accepts or demands money in advance for goods or
29 services when the goods are not delivered or the services are
30 not provided.

1 (a.1) Grading of offenses.--Where a person commits an
2 offense listed in subsection (a) and the victim of the offense
3 is under the age of 60, the person commits a misdemeanor of the
4 second degree. Where a person commits an offense listed in
5 subsection (a) and the victim of the offense is 60 years of age
6 or older, the person commits a misdemeanor of the first degree.

7 * * *

8 (c) Definitions.--As used in this section the following
9 words shall have the meanings given to them in this subsection:

10 "Adulterated." Varying from the standard of composition or
11 quality prescribed by or pursuant to any statute providing
12 criminal penalties for such variance, or set by established
13 commercial usage.

14 "Mislabeled." Varying from the standard of trust or
15 disclosure in labeling prescribed by or pursuant to any statute
16 providing criminal penalties for such variance, or set by
17 established commercial usage.

18 "Prize." Anything offered, or purportedly offered and given,
19 or purportedly given, to a person by chance. For purposes of
20 this definition, chance exists if a person is guaranteed to
21 receive an item and, at the time of the offer or purported
22 offer, the telemarketer does not identify the specific item that
23 the person will receive.

24 "Prize promotion." A sweepstakes or other game of chance, or
25 an oral or written express or implied representation that a
26 person has won, has been selected to receive or may be eligible
27 to receive a prize or purported prize.

28 Section 2. This act shall take effect in 60 days.